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—*Gross Telecasting, Inc.*
Docket No. 20014

FCC 82R–63

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Application of	
GROSS TELECASTING, INC.	DOCKET NO. 20014
For Renewal of Licenses of Stations WJIM, WJIM-FM, WJIM-TV Lansing, Michigan	File Nos. BR–830 BRH–1052 BRSCA–207 BRCT–68

Appearances

John W. Pettit, *Neal M. Goldberg*, *Brian C. Murchison*, *Fern J. Jarmulneck*, and *Gene A. Bechtel*, on behalf of Gross Telecasting, Inc.; *Andrew Jay Schwartzman*, *Jill F. Kasle*, and *Deborah C. Costlow*, on behalf of American Civil Liberties Union of Michigan, Lansing Branch;

and *Charles W. Kelley* and *Joseph Belisle*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

Adopted: October 29, 1982; Released: November 10, 1982.

BOARD MEMBER JACOBS FOR THE REVIEW BOARD:

1. This proceeding, already aptly described by the presiding Administrative Law Judge (ALJ) Byron E. Harrison as "unique, massive and complex,"[1] exhaustively explores the questions whether Gross Telecasting, Inc. (GTI), licensee of Stations WJIM(AM), WJIM-FM, and WJIM-TV, Lansing, Michigan, possesses the requisite qualifications to be or to remain a Commission licensee and whether grant of its 1973 renewal applications for these three stations would serve the public interest, convenience and necessity. The case grew out of a Commission field investigation and non-public inquiry into the operations of the stations and a petition to deny renewal of Station WJIM-TV's license, filed by the Lansing Branch of the American Civil Liberties Union (ACLU). The applications were designated for hearing by Memorandum Opinion and Order 46 FCC 2d 543 (1974), and the ACLU was made a party to the proceeding.[2] In his 196-page Initial Decision, the ALJ resolved eight of the 14 designated issues favorably to GTI, but concluded that the remaining issues, concerning "clipping" of television network programs, clipping misrepresentation, pursuit of a private interest, undisclosed use of taped weather broadcasts, and deceptive contour maps, revealed such extensive misrepresentations and "outright fraud" perpetrated against the Commission, the CBS Television Network, and the public that GTI was "beyond rehabilitation" and should be absolutely disqualified from remaining a licensee; hence, he denied all three renewal applications. I.D., Conclusions, paras. 135, 136.

2. All previous stages of this proceeding have had huge dimensions—14 issues, 917 exhibits, 129 witnesses, 164 hearing sessions, and 24,355 pages of transcript—and the ALJ is to be to specially commended for distilling everything into a very thoughtful, well-indexed, and comprehensive document. This has been followed by 430 pages of exceptions, briefs, and

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[1] Initial Decision (I.D.), FCC 81D-57, 92 FCC 2d ______, Findings, para. 6.

[2] The eight originally designated issues were augmented by six issues added in the following Memorandum Opinions and Orders: 48 FCC 2d 1186 (Rev. Bd. 1974); 49 FCC 2d 56 (Rev. Bd. 1974); 55 FCC 2d 76 (Rev. Bd. 1975); 55 FCC 2d 295 (1975); and 41 RR 2d 634 (ALJ 1977).

reply briefs filed by GTI, ACLU and the Broadcast Bureau,[3] plus miscellaneous other pleadings. The Board has reviewed the Initial Decision in light of all of these pleadings, the oral argument held July 16, 1982, and our examination of the record. We adopt the findings of fact in the Initial Decision, except as modified herein, but reverse certain of the ALJ's conclusions and conclude that GTI is qualified to remain a Commission licensee and that a two-year short-term renewal of its license for Station WJIM-TV and the full-term renewal of its licenses for Stations WJIM and WJIM-FM would best serve the public interest, convenience, and necessity.[4] See Ultimate Conclusions, paragraphs 75–81 below.

Background

3. GTI first became a Commission broadcast licensee 48 years ago, when its AM license was granted on November 30, 1934. Its TV and FM licenses were first granted in 1950 and 1960, respectively. All three licenses have been regularly renewed by the Commission until the present proceeding, which officially focuses on the three-year license period reviewed in GTI's 1973 renewal applications—October 1, 1970 through September 30, 1973.[5] However, since some of the designated issues concerned events occurring in the early 1960's and the hearing designation order contained no time borders, the ALJ refused to impose a time limitation on the scope of inquiry, Memorandum Opinions and Orders, FCC 75M–146, released January 22, 1975, and FCC 75–941, released May 23, 1975, and evidence was admitted that pertained to GTI's activities as early as 1958 and as "recently" as April 1977. GTI became a publicly-owned corporation in 1965, its stock is listed on the American Stock Exchange, and it has more than 1700 stockholders. I.D., Findings, paras. 10–11. However, Harold F. Gross, the founder of GTI, his wife, children and grandchildren own 51.9% of GTI's stock. GTI Exh. 152.

4. H. F. Gross served as president of GTI from prior to 1955 until March 1971 and as chairman of the Board of Directors and chief executive officer of the stations from March 1971 until April 1977. *Id.*, Tr. 21679. At that time, his son, James H. Gross, who had been GTI's president since March 1971, became Board chairman and chief executive officer. *Id.* During the 1971–77 period, the two Grosses shared responsibility for management,

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[3] By Order, FCC 82R–13, released March 19, 1982, the Board relieved the parties of the normal page limitations for these pleadings, subject only to the express limitation imposed by Section 1.277(a) of the Commission's Rules, 47 CFR 1.277(a). that all pleadings "shall point out with particularity alleged material errors in the decision."

[4] The significance and value of the ALJ's herculean effort is not diminished by the fact that the Board disagrees with some of his conclusions and the ultimate result. The entire decision was extremely useful. *See Greater Boston Television Corp.* v. *FCC*, 444 F.2d 841, 853 (D.C. Cir. 1970).

[5] Pursuant to Commission rules, renewal applications must actually be filed at least 90 days before the expiration date of the licenses sought to be renewed. Hence, GTI's applications were filed on July 2, 1973.

policy formulation, and day-to-day control of broadcast operation at all three stations, with James Gross assuming more and more responsibility but not ultimate responsibility until April 1977. Tr. 5405–08, 15869–71, 21679. H. F. Gross was intimately involved in day-to-day affairs at the stations via his physical presence and a superabundance of memoranda and staff directives, many of which have been admitted into evidence in this proceeding.[6] The Grosses were definitely "in charge" at the stations, and H. F. Gross was clearly "the boss."

Summary of Exceptions

5. In its exceptions, GTI disputes each of the ALJ's adverse conclusions concerning "clipping," clipping misrepresentation, private interest, taped weather broadcasts, and deceptive contour maps (see paragraph 1, *supra*). In addition, it urges that the ALJ erred in ignoring significant mitigating circumstances relating to GTI's conduct and in concluding that GTI was "beyond rehabilitation." On the other hand, the ACLU argues in its limited exceptions that the ALJ wrongly decided the news slanting, distortion, or suppression issue, the labor practices and local public file issues, and the Ferman letter misrepresentation issue in GTI's favor, but otherwise generally supports the rest of the ALJ's conclusions.[7] The Broadcast Bureau has likewise filed limited exceptions, in which it supports the ALJ's "clipping" and clipping misrepresentation conclusions but maintains that the record supporting denial of GTI's renewal applications would be even more compelling but for three erroneous evidentiary rulings made by the ALJ.

Discussion

6. *"Clipping" Issue*. Effective November 15, 1966, GTI and the CBS Television Network entered into a revised affiliation contract that contained the following language:

> Broadcaster shall, with respect to each Network Program broadcast over Affiliated Station, broadcast such Network Program in its entirety (including but not limited to commercial announcements, billboards, credits, public service announcements, promotional announcements and network identification) during the entire length of the time period for the Network Program as offered to Broadcaster by CBS. (ACLU Exh. B, p. 4)

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[6] However, H. F. Gross was not available on a day-to-day business basis from August 1971 until March 22, 1972, when he returned to his office after convalescing from a stroke. I.D., Findings, paras. 195, 197.

[7] In two footnotes (ACLU Br., pages 1 and 3), the ACLU also excepts to the refusal of the Commission or the Review Board to designate for hearing some eight additional issues, concerning such matters as improper editorializing by GTI, alleged violations of the Fairness Doctrine and Section 315 of the Communications Act, and alleged misrepresentation of the amount of time devoted to local programming. These exceptions have not been sufficiently articulated to warrant further consideration and will be denied. Sections 1.277(a) and 1.282(b)(2) of the Rules, 47 CFR 1.277(a) and 1.282(b)(2).

In order to be compensated for broadcasting network programs, GTI undertook to submit weekly reports certifying that the specific programs had been broadcast. If deletions or cancellations were indicated in such reports the amount of payment received from the network might be reduced. "Clipping" is the Commission's term for instances in which a licensee certifies that specified network material was broadcast in full when there were, in fact, cancellations or deletions. The Commission considers falsely certifying that network material has been carried to be a use of a licensed facility for fraudulent purposes, *Network Clipping*, 40 FCC 2d 136, 26 RR 2d 1253, 1254 (1973), "regardless of whether the clipped material consists of advertising, program content, or other material provided by the network." While deletions with notice to the network do not consitute clipping, if deletions of "program content" in order to insert local commercial announcements become a "frequent practice," the Commission will consider on an ad hoc basis whether the licensee has subordinated the public's interest in viewing programs in their entirety to the licensee's private interest in maximizing the sale of commercial time. 40 FCC 2d at 137, 26 RR 2d at 1255.

7. In the instant case, the clipping issue was added by the Review Board at the ACLU's request, based in part on affidavits from former employees of WJIM-TV, who asserted that during 1969–70 and 1972–73, the station "cut out of its network programming, particularly movies and sports events, to present local news or advertising" and that H. F. Gross "seemed to condone" a plan to broadcast local news and commercials instead of the network credits preceding the late movie. *Gross Telecasting, Inc., supra*, 48 FCC 2d at 1190, 1191, 31 RR 2d at 804. The ACLU's motion to enlarge was filed on May 14, 1974, and the ALJ made findings of clipping based on documentary and testimonial evidence concerning a period from 1958 through May 1974. I.D., Findings, paras. 175–245. The central piece of documentary evidence was ACLU Exhibit U, which contained a columnar itemized summary of 4700–5000 alleged instances of clipping occurring between May 1, 1970 and May 18, 1974. Tr. 7890. However, the ALJ refused to admit the exhibit, citing Rule 403 of the Federal Rules of Evidence, which permits the exclusion of relevant evidence if its probative value is substantially outweighed "by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Tr. 7891. In its place, he permitted the ACLU to select 600 line entries from the original exhibit, plus one full broadcast day for each of the four years, and subsequently admitted ACLU Exhibit W (Amended) into evidence. Tr. 7891, 21751. That revised exhibit describes 627 alleged instances of clipping from September 15, 1970 through May 10, 1974, and is based on information taken from WJIM-TV program logs, CBS format logs, and WJIM-TV compensation reports. I.D., Findings, para. 230. In

response, GTI submitted Exhibit DDD (Amended), which provided explanations for 264 of the 627 alleged clips.

8. The ALJ made a number of specific findings concerning ACLU Exhibit W (Amended) and GTI Exhibit DDD (Amended), which we need not repeat here. See I.D., Findings, paras. 234–243. Suffice it to say that he deemed the unreported clips that GTI admitted or that were simply unrebutted, whether of commercials or of promotional announcements, credits, billboards, or sponsorship identifications, sufficient for him to conclude that GTI had engaged in the prohibited practice of network clipping "over an extended period of time," that GTI's "intent to engage in such practice is clear," and that this conduct, in and of itself, was sufficient to warrant denial of GTI's renewal applications. I.D., Conclusions, paras. 30–55, 131, 135. As his legal basis for this result, the ALJ determined that GTI had violated Section 73.1205 of the Rules (Fraudulent billing practices), 47 CFR 73.1205,[8] had disobeyed the prohibitions contained within various Commission policy statements concerning fraudulent billing and clipping that were issued between 1965 and 1975,[9] and had committed fraud *per se* through the submission of false certification reports.

9. GTI's exceptions contain the frank admission that WJIM-TV did fail to report to CBS deletions of "some portions of the network feed" during the 1970–73 license period under review, but GTI vigorously argues that it never intended to delete network commercial material or to fail to report such deletions and that the unreported deletion of noncommercial material was not contrary to any Commission rule or policy at the time in question. GTI Br., p. 8. Moreover, GTI disputes the ALJ's conclusions that its conduct constituted "fraud *per se*," and maintains that when considering GTI's unreported deletions of network commercials, the ALJ erred in ignoring the proffered reasons for such inadvertent deletions and other mitigating factors in formulating his conclusion on this issue. *Id.*, p. 9. The essence of GTI's argument is that during the 1970–73 period

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[8] We assume that the ALJ is referring to Section 73.1205 as it existed prior to its amendment in 1976, since all of the alleged clipping instances occurred prior to that time. Pre-1976, the rule read, in pertinent part:

> No license . . . shall knowingly issue . . . any bill, invoice, affidavit or other document . . . which misrepresents the quantity of advertising actually broadcast (number or length of advertising messages) or the time of day or date at which it was broadcast.

The express prohibition against knowingly issuing false documents concerning the broadcast of "noncommercial matter," now contained in Section 73.1205(b) of the Rules, was not added until *Report and Order in Docket 20499*, 59 FCC 2d 786 (1976).

[9] *Fraudulent Billing Practices*, 1 FCC 2d 1068, 6 RR 2d 1540 (1965); *Fraudulent Billing Practices*, 23 FCC 2d 70, 19 RR 2d 1506 (1970); *Renewal or Revocation Hearing Proceedings in Future Fraudulent Billing Cases*, 38 FCC 2d 1051, 25 RR 2d 1759 (1972); *Network Clipping, supra;* and *Fraudulent Billing Practices*, 53 FCC 2d 900 (1975).

Commission clipping policy was evolving and that "As FCC policy changed, so too did GTI's." *Id.*, p. 8.

10. According to GTI, there were essentially two types of unreported deletions reflected in the record: (1) program pre-emptions caused when WJIM-TV's local programming ran over into a network program, or when WJIM-TV disengaged from the network feed at the end of a network program to insert local news headlines; and (2) the prescheduled expansion or creation of breaks in network non-program material to add local commercials. *Id.*, pp. 10–11. GTI maintains that "type (1) deletions" were not for the purpose of inserting additional commercials, but rather to fulfill its public interest programming judgment that its local programming was more important than whatever part of the network feed was deleted. *Id.*, p. 11. It concedes that these "partial program pre-emptions" occasionally resulted in unreported deletions of commercials, but asserts that such deletions do not constitute clipping " in the classic sense," citing *Flower City Television Corp.*, 57 FCC 2d 112, 124, 35 RR 2d 1279, 1292 (1975), since WJIM-TV did not delete a network commercial and insert a local one in its place. *Id.* As to "type (2) deletions," GTI states that its firm policy was to protect network commercials and essential program content, although both "occasionally were inadvertently deleted." *Id.* The network material intended to be deleted was "clutter" or "fill" material, consisting primarily of promotional announcements, credits, network identifications, and the like. *Id.*

11. While the ACLU supports the ALJ's ultimate conclusions on the clipping issue, it believes that the record supports even stronger condemnation of GTI's practices. The ACLU urges that GTI's clipping prior to March 1973 was done with the active participation and direct knowledge of the Grosses, breached GTI's network affiliation contracts, violated clear Commission regulations and policy, transgressed criminal fraud statues, and impaired the public's enjoyment of programming and its constitutional rights to receive information over a period of many years. ACLU Br., pp. 12–13, 17. It also argues that even if the pre-March 1973 clips are ignored, GTI's post-March 1973 conduct was sufficiently egregious, standing alone, to warrant denial of WJIM-TV's renewal application. *Id.*, pp. 9–12. Finally, the ACLU excepts to the ALJ's refusal to admit ACLU Exhibit U into evidence, arguing that the exhibit was itself a summary of evidence—a 250-page abstract compiled from 43,000 documents—and that no part of the summary was repetitive since each entry was probative of a separate instance of clipping, each of which should have been found by the ALJ to be a separate violation of the Commission's rules and applicable laws. *Id.*, pp. 8, 18–21.

12. Finally, while also supporting the ALJ's ultimate conclusions, the Broadcast Bureau offers its own extensive gloss on what it perceives to have been GTI's "pernicious and pervasive" clipping conduct. Bureau Br.,

pp. 6–19. It characterizes clipping as a "key element of WJIM-TV's business operation" and a practice "participated in and directed by GTI's highest corporate officials, who understood the fraudulent nature of their activities and stood to gain from the economic advantage of their deceit." *Id.*, pp. 10, 13. In the Bureau's judgment, the record on GTI's clipping activities establishes willful and repeated violation of Section 317 of the Communications Act of 1934, as amended (because of the deletion of sponsorship identifications), the Commission's fraudulent billing rules, and the Michigan criminal fraud statutes. *Id.*, p. 19. Like the ACLU, the Bureau excepts to the ALJ's limitation on the size of the main clipping exhibit; in addition, the Bureau argues that the ALJ erred in requiring the Bureau and the ACLU to prepare a combined direct case on clipping (Tr. 11135) and in refusing to permit the Bureau to use WJIM-TV's program logs as rebuttal to GTI testimony concerning the contents of expanded station breaks, the frequence of clipping incidents, and the unintentional nature of these incidents (Tr. 23224).

13. The foregoing summary of exceptions illustrates the passion with which this case (and especially the clipping and clipping misrepresentation issues) has been litigated. But, as aptly noted by the ACLU, most of the critical facts in the clipping issue are not seriously in dispute. ACLU Br., p. 8. It is rather a question of interpreting the facts and, above all, correctly applying the law. As we have previously praised the ALJ for his exhaustive Initial Decision (see paragraph 2, *supra*), so too we take special note of the ACLU's and the Bureau's extensive participation in this proceeding. In particular, we commend the ACLU for not only initially raising important public interest questions about GTI's stewardship of its broadcast licenses some nine years ago, but also fully shouldering the subsequent burdens of participation as a full-fledged party in this proceeding.

14. We have reviewed the various Commission policy statements and rules that have been promulgated between 1965 and 1976 concerning fraudulent billings and network clipping (see notes 8 and 9, *supra*) and the key case precedents on which the parties rely,[10] in light of GTI's admissions that WJIM-TV did engage (at least unintentionally) in the unreported deletion of commercials and promotional announcements, credits, and other "clutter" during the 1970–73 license period and (albeit rarely) as late as May 1974. It has already been established that *Fraudulent Billing Practices (1965), supra*, effective November 29, 1965, gave

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[10] E.g., *Radiozark Broadcasting of Louisiana* (Notice of Apparent Liability), FCC 71-720 (unpublished, July 8, 1971), Memorandum Opinion and Order, 31 FCC 2d 1085, 22 RR 2d 1101, *recon. denied*, 32 FCC 2d 603, 23 RR 2d 284 (1971); *Channel 13 of Las Vegas, Inc.* (Notice of Apparent Liability). FCC 72-74 (unpublished, January 26, 1972), Memorandum Opinion and Order, 37 FCC 2d 518, 25 RR 2d 286 (1972), *recon. denied*, 39 FCC 2d 128, 26 RR 2d 695 (1973); and *Hubbard Broadcasting, Inc.*, 41 RR 2d 979 (1977).

sufficient notice that the Commission interpreted the fraudulent billing practices provisions of Section 73.1205 of the Rules (see note 8, *supra*) to encompass the unreported deletion of commercials as well as "double billing" practices.[11] However, we believe that it was not until March 2, 1973 (the release date of the Commission's *Network Clipping* public notice, supra) that the Commission articulated a policy prohibiting the unreported deletion of noncommercial material from a network feed. Finally, it was not until Section 73.1205 was amended by *Report and Order in Docket 20499, supra,* effective July 15, 1976, that the Commission's rules expressly prohibited noncommercial clipping.

15. Applying these considerations to WJIM-TV's clipping activities, we are obliged to narrow the proper legal focus of Commission concern to WJIM-TV's clipping of commercials after November 1965 and the clipping of "clutter" after March 1973.[12] In so doing, we shall not consider whether these activities also or alternatively constituted fraud *per se* or violated state or federal criminal fraud statutes or the alleged constitutional right to receive information. It appears to us that the designated issues in this proceeding do not encompass any of these legal theories—which are only sketchily advanced by the ALJ or the parties in any event—and that administrative due process would be offended if we attempted to tailor them to GTI at this late date. *See Cleveland Television Corporation,* FCC 82R-62, released October 14, 1982, para. 8; *RKO General, Inc.* v. *FCC, supra; Radio Athens, Inc.* v. *FCC,* 401 F.2d 398, 402 (D.C. Cir. 1968).[13]

16. In support of its contention that the properly cognizable clipping incidents of WJIM-TV (see paragraph 15, *supra*) were unintentional in motivation (as to commercial clips), justifiable in character (where partial

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[11] *Western Communications, Inc.* (KORK-TV), 59 FCC 2d 1441, 1445, 37 RR 2d 999, 1004 (1976), *aff'd sub nom. Las Vegas Broadcasting Co.* v. *FCC,* 589 F.2d 594 (D.C. Cir., 1978), *cert. denied,* 441 U.S. 931 (1979). Double billing is the "furnishing of false information concerning broadcast advertising to any party contributing to the payment of such advertising, the purpose being to induce such party to pay more than the actual rate for the advertising." *Fraudulent Billing Practices, supra,* 1 FCC 2d at 1068, 6 RR 2d at 1541. While combatting double billing was the avowed reason given for adopting fraudulent billing rules in that document, the Commission held in the KORK-TV case that the language of Section 73.1205 encompassed the concept of clipping commercials even though no clipping examples were given.

[12] The Commission may not find conduct to be improper "only in retrospect." *RKO General, Inc.* v. *FCC,* 670 F.2d 215, 222 (D.C. Cir. 1981). Also see *Pressley* v. *FCC,* 437 F.2d 716, 721 n. 5 (D.C. Cir. 1970) ("adequate prior notice of a standard by which conduct can be measured" must precede a finding of bad character based on applicant misconduct), and *Straus Communications, Inc.* v. FCC, 530 F.2d 1001, 1011 (D.C. Cir. 1976).

[13] We note that Commission interpretations of Section 73.1205 and policy statements on fraudulent billing practices customarily refer to specified conduct as "patently fraudulent" (1 FCC 2d at 1069) or even "prima facie . . . fraud" (53 FCC 2d at 905); however, we agree with GTI that if it is to be charged with "fraud *per se,*" apart from violation of specific Commission rules or policies, the elements of common law fraud must be fully and specifically addressed and proved. This has not occurred here. See also *WHW Enterprises, Inc.,* 89 FCC 2d 799, 806–07, 51 RR 2d 409, 414 (Rev. Bd. 1982), concerning Commission policy of not relying on local fraud laws absent an authoritative ruling by local officials.

program pre-emptions or "clutter" was involved), and *de minimis* in quantity (considering the four-year period under the ACLU's special scrutiny), GTI has detailed three principal management steps that it took to conform WJIM-TV practices to evolving Commission clipping policy. First, on March 22, 1972, H. F. Gross' first day back at WJIM-TV after an eight-month convalescence following a major stroke, he issued a memorandum to Mr. Philip Sherck, the immediate supervisor of the traffic director, which said:

> Per our discussion, please see that we are in compliance with the FCC "clipping" ruling. I understand we are currently conforming with prescribed standards in this area. (Bureau Exh. PPP).

The clipping ruling in question was the Commission's unpublished January 26, 1972 notice of apparent liability directed against Channel 13 of Las Vegas (see note 10, *supra*), which was the subject of a February 17, 1972 letter to H. F. Gross from Washington counsel (Bureau Exh. NNN). The letter advised that the undisclosed clipping of sponsorship identifications violated Section 317 of the Communications Act and Section 73.1205 of the Rules, according to the Las Vegas ruling, and it was discussed at the next GTI department head meeting and in several conversations between H. F. Gross and other key WJIM-TV officials on March 22. I.D., Findings, paras. 196–198. At this time, it was H. F. Gross' belief that GTI was not engaged in network clipping, as that term was then understood, but he made no check on that date to verify this belief. *Id.*, para. 198. Gross subsequently met with Sherck and Jack Colgrove, the traffic director, and told them to get any clipping problems "cleaned up". Tr. 20360–61. And Sherck told Colgrove that the memo was a "pretty serious edict and we had better take note of it." Tr. 20359. Clipping appeared to cease by summer of 1972, but did not completely stop. I.D., Conclusions, paras. 46, 48.

17. The second major step that GTI took occurred in September 1972, when H. F. Gross apparently first became aware that WJIM-TV's weekly compensation reports to CBS did not indicate the exact time that a program was carried, but simply checked off the program as carried. I.D., Findings, para. 204. Gross immediately ordered elimination of the check-off procedure (then 15 years old), out of concern that it did not adequately inform CBS about deletions which were less than program length, and directed that future reports should indicate the exact on and off times for each program. *Id.* Sherck saw to it that the new policy was implemented. *Id.*, para. 205. The ALJ credited this effort as an "attempt to correct the matter of false reporting," and concluded that clipping incidents appeared to be reduced after September 1972. I.D., Conclusions, para. 49. However, he also observed that the revised procedure would not reveal expanded station breaks occurring during a program

and faults Gross for not having further revised WJIM-TV's procedures at this time, such as by making use of the "remarks column" on the reporting form to fully explain all deletions. *Id.*[14]

18. Finally, in mid-May 1973 Washington counsel apprised the Grosses and Sherck at a CBS affiliates meeting, and via a May 15, 1973 letter, that all WJIM-TV clipping had to stop, a competing station was monitoring WJIM-TV's conduct, and "The Commission says clipping is a deceptive practice about which it's prepared to read the riot act" (apparently alluding to the Commission's *Network Clipping* public notice of March 2, 1973, *supra*). Bureau Exh. 000. After James Gross and Sherck confirmed that some clipping was still occurring, Gross issued a memorandum to Sherck on May 23, 1973:

> Per our conversation of May 16, FCC and station policy specifically prohibits the deliberate clipping of network time for overrun of local insertions. Special care must be exercised to see that we do not clip portions at the beginning or end of any network program. (GTI Exh. E.)

In addition, on May 24, 1973 H. F. Gross reviewed the May 15 Washington counsel letter described above, underlined parts of it, and sent copies to Sherck and Colgrove with a marginal note to "comply without exception." I.D., Findings, para. 215; Bureau Exh. 000. GTI maintains that all clipping effectively ended at WJIM-TV in May 1973 as a result of this final combination of James and H. F. Gross policy directives. While it concedes that occasional deletions continued past May 1973, it urges that any such deletions were "contrary to station policy," GTI Br., p. 16, and did not go unchallenged. For instance, in June 1973 H. F. Gross wrote two memoranda reprimanding WJIM'TV's traffic department for scheduling extra commercials during April and May 1973, and, in May 1974, upon discovering that Colgrove had scheduled expanded station breaks in several children's programs, James Gross placed him on probation for three months and the incidents were reported to CBS. I.D., Findings, paras. 221, 226–227. As for GTI's policy of running its late news program over into the ensuing CBS program when important or late-developing news stories occurred, GTI concedes that it continued this policy beyond May 1973, but argues that it believed this policy to be a proper public interest programming judgment and that it was effectively reported to CBS in WJIM-TV's weekly reports beginning in September 1972 and was explicitly described in a May 29, 1973 letter to CBS (ACLU Exh. 0).

19. We will deny the procedural exceptions of the ACLU and the Bureau concerning the ALJ's rulings on the ACLU clipping exhibits and

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[14] In a September 16, 1974 meeting in New York between Sherck and CBS officials, WJIM-TV was requested to use the remarks column in this manner in the future and Sherck agreed. I.D., Findings, para. 229.

related evidentiary matters. Having studied these exhibits and the wealth of other clipping evidence in the record, we find no basis to overturn the ALJ's sound exercise of discretion to limit the time spent on a single evidentiary matter and to require the parties to consolidate forces and put forward their most persuasive evidence in a concise way. *Cf. Tinker, Inc.*, 4 FCC 2d 372, 7 RR 2d 677 (1966). While not binding in Commission proceedings,[15] Rule 403 of the Federal Rules of Evidence was aptly applied here.

20. As to the substantive clipping exceptions of the parties, our conclusions focus on the number and frequency of unreported deletions, WJIM-TV's explanations of its conduct, and its efforts to comply with evolving Commission clipping policy. We conclude first that the number and frequency of proven unreported and unexcused clips in this proceeding has been greatly exaggerated. Indeed, no precise numbers are even available. The rejected ACLU Exhibit U—the heart of the clipping evidence—was only *estimated* to include anywhere from 4700 to 6000(!) alleged instances of clipping occurring over a four-year period (Tr. 7890), and the admitted evidence—ACLU Exhibit W (Amended)—scrutinized 627 alleged instances of clipping, but these instances were not limited to the legally relevant time frames specified in paragraph 15, *supra,* and thus are not all probative. Nevertheless, the basic fact remains, and we conclude, that a number of unreported clips of commercial and noncommercial matter from the CBS network feed did occur at WJIM-TV during the legally cognizable period.

21. While GTI argues that it never intended to fail to report legally cognizable deletions, we conclude that its reporting procedures were wholly inadequate prior to September 1972 (see paragraph 17, *supra*) and partially inadequate prior to September 1974 (see note 14, *supra*). However, credit is deserved for all of the remedial action that WJIM-TV took in this area prior to May 1974, when ACLU filed its petition to add the clipping issue to this proceeding. As to its argument that it never intended to delete commercials during its type (1) program pre-emptions, we can appreciate that WJIM-TV's avowed purpose was only to maximize its local programming, but we must charge it with knowledge that the consequence of such pre-emptions would be at least occasional commercial deletions. All that was required by Section 73.1205 of the Rules was to *report* those deletions. In other words, contrary to GTI's view, the question was never one of choosing between a public interest judgment to let its programming run late or protect network commercials; it was free to take the former course, so long as it reported the commercial deletions to CBS. Similarly, while we credit GTI's "firm policy" to protect network commercials when it carried out type (2) deletions—expanded station

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[15] *See* Section 1.351 of the Commission's Rules, 47 CFR 1.351.

breaks—we must charge it with error in failing to report instances when such deletions did in fact occur. See paragraph 10, *supra*. Such deletions were not reported to CBS on a routine basis until the September 1974 reporting changes referenced above.

22. As to the clipping of "clutter," we conclude that WJIM-TV's modified practices (see paragraph 18, *supra*) were effectively implemented sufficiently promptly after the *Network Clipping* public notice to absolve it from severe criticism. *See Hubbard Broadcasting, Inc., supra*, at 985. Prior to March 1973, Commission policy on the clipping of clutter was not sufficiently clear to form the basis for denying a renewal of license. *Id.* In this connection, we reject the view that since such clipping was clearly inconsistent with the terms of GTI's CBS affiliation contract (see paragraph 6, *supra*), this was adequate notice that the conduct was improper and would be subject to Commission sanction. The Commission is not the proper forum to adjudicate alleged claims arising out of private contractural agreements, *Choate, Hall and Stuart*, 51 RR 2d 261 (1982), and the purpose of the Commission's *Network Clipping* public notice and subsequent modification of Section 73.1205 of the Rules was not to aid enforcement of the terms of such affiliation contracts or vice-versa, but rather to declare what conduct the Commission, in the excercise of its own public interest mandate, deemed to be sanctionable. Prior to March 1973, the Commission had not clearly defined clipping to include noncommercial matter; the fact that private contracts did is not relevant from the point of view of Commission sanctions for violations of Commission rules and policies.

23. In sum, we conclude that while WJIM-TV's clipping conduct occurred over an extended period and involved a number of unreported clips of network commercials and noncommercial matter, GTI did indeed take meaningful management steps to bring its station into full compliance with evolving Commission policies, almost all prior to the designation of WJIM-TV's renewal applications for hearing and the subsequent ACLU petition to add the clipping issue. While it would have been preferable if all unreported clipping had terminated in July 1971, when GTI received its first specific notice that Section 73.1205 of the Rules was being interpreted by the Commission to encompass the unreported clipping of commercials,[16] WJIM-TV was faced with entrenched policies and habits which apparently existed from as early as 1958. Tr. 20795–96. The two-

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[16] On July 30, 1971, GTI received an all-clients memorandum from its Washington communications counsel, which described an unpublished July 8, 1971 notice of apparent liability that had been issued to Radiozark Broadcasting of Louisiana (see note 10, *supra*) because of its filing of false certificates of performance of commercials with the Mutual Broadcasting System. I.D., Findings, para. 195. The memo indicated that the Commission would treat certifications of performance of commercials that were not actually broadcast as a violation of Section 73.1205, and suggested that all clients review their certification procedures.

years of effort (until May 1973) that GTI required until clipping effectively ceased at WJIM-TV must be condemned for its inefficiency and ineffectiveness, but we must also take due account of the steps that WJIM-TV took to come into full compliance and must view this entire picture against GTI's 48 years of broadcast performance and the sanctions visited by the Commission against other similarly situated clipping violators. When we do, we conclude that while this conduct forms part of the basis for a two-year short-term renewal of WJIM-TV's license, it does not support denial of renewal. See Ultimate Conclusions, paragraph 78, *infra*.

24. *Clipping Misrepresentation Issue*. This issue seeks to determine whether GTI "made misrepresentations," "lacked candor," or "failed to ascertain the true facts" in a letter submitted to the Commission on March 25, 1971, in response to a Commission inquiry concerning a WJIM-TV viewer's clipping complaint. See Memorandum Opinion and Order, *supra*, 55 FCC 2d 76. In adding the issue, the Board stated that the March 25 letter, which denied any wrongdoing, conflicted with other GTI memoranda indicating that Station WJIM-TV, *inter alia*, cut out of network shows early or eliminated the network credits or promotions so that local advertisements could be run and the network program joined or rejoined on time. 55 FCC 2d at 77.

25. According to the viewer, a Mrs. R. Cunningham, WJIM-TV and another Lansing station deleted portions of network programs such as Rowan and Martin's "Laugh In" and "used the time *from the program* for local commercials" (emphasis in original). She cited the Merv Griffin show as a chronic example and the CBS Evening News as another program where these practices occured on WJIM-TV. Mrs. Cunningham stated that she would like an explanation concerning this behavior and the measures taken to prevent a reoccurrence. Bureau Exh. A. The then Chief of the Complaints and Compliance Division of the Broadcast Bureau, William B. Ray, in turn attached the complaint to a letter he sent to GTI dated March 17, 1971, requesting comments in order that the Commission "may be fully advised as to all the circumstances surrounding the allegations made." The letter stated that the comments should include but need not be limited to the following:

> Did or does Station WJIM-TV insert advertising in network programs at other than scheduled times in such a manner as to affect the program content of such broadcasts? If so, state when and under what circumstances, and whether it is the policy of the licensee to insert commercial or other material in programs, join them late or leave them early with such effect. (Bureau Exh. A.)

26. The GTI response, drafted by Sherck and signed by H. F. Gross, read as follows:

> Dear Mr. Ray:

> This is in reference to your inquiry dated March 17, 1971, concerning WJIM-TV's commercial practices with relation to network programming.
>
> It is not now, nor has it been in the past our policy or practice to insert locally originated commercial material within the body of a network telecast. From time to time, and on limited occasions, the network advises us of unsold commercial positions within a network program and authorizes our use of these positions for the insertion of locally originated advertising. In these instances, we have made use of these authorized availabilities for the insertion of local advertising, but limited to the designated time and specific position(s).
>
> The letter from viewer, Mrs. R. Cunningham, specifically cites "the Merv Griffin" program, and alleges that WJIM-TV inserts local advertising to the exclusion of network program material. The format of "The Merv Griffin" show is designed by the network to allow for six specific local cut-away positions, to be used by local stations for local advertising. Since the format of the programming is loosely designed and flows without specific timings, it is understandable that a viewer could erroneously develop the impression that a local station was covering network program material. There are times when the program material runs without interruption beyond the desired break time, which has the reverse effect of condensing the network commercials and the local insertions into a brief span of time. Another circumstance that occurs is the delayed start time for the "Merv Griffin" program by the network. On occasions when the network program runs beyond 11:00 p.m. . . . such as March 23rd when the special public service program, "Selling of The Pentagon" ran until 11:18 p.m., the network delayed the start of the "Merv Griffin" show until 11:48 p.m. The 30 minutes in between were filled with regularly scheduled local news programming and this could have erroneously given the impression that Station WJIM-TV was covering network program material. On other occasions when CBS movies on Thursday or Friday run beyond 11:00 p.m., we broadcast a full 30 minutes of local news, weather and sports before joining Merv Griffin.
>
> This viewer also cites the "CBS Evening News" and alleges that local commercial material is inserted. It should be noted that the "CBS Evening News" is an integral part of our "News hour" . . . and our local newscasters present a local live lead-in to the CBS News, designed for a precise join at exactly 6:30 p.m. nightly, and the CBS News is subsequently carried without local interruption.
>
> In summary, WJIM-TV does not insert local material or advertising in network programs except when authorized. (Bureau Exh. B.)

27. At the hearing, both Sherck and H. F. Gross acknowledged that during the period covered by the letter, the station deleted network credits, promotional announcements and other so-called fill material but in a manner that would protect the body of the program and network commercials. Tr. 20320–21, 21087.[17] The "body" of the program was defined by Sherck to consist of "the dramatic action in that type of program—the entertainment in a variety program, the game itself in a sporting event, or the deliverance of the news in a news program." Tr.

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[17] The ALJ found that these deletions were not reported to the network. I.D., Findings, paras. 187–190.

20338. Sherck responded as follows when queried why he prepared the letter in the fashion that he did:

> Well, Mr. Ray asked about circumstances surrounding the allegations and as I read Mrs. Cunningham's complaint, our allegations included most specifically WLIX's treatment of "Rowan & Martin" taking time from the program and a practice of jamming commercials into programs. It was the allegations that are in Mrs. Cunningham's letter that I focused on entirely in preparing this response. Mr. Ray asked . . . "Was advertising inserted in such a manner as to effect the program content? The program content I interpreted it to mean the same as we have just defined—the body of the program. So with this basis I prepared a draft to be sent back to Mr. Ray. (Tr. 20340–41.)

28. H. F. Gross testified that he did not remember giving Sherck any instructions on preparing the letter to Mr. Ray. He said that on reading Mrs. Cunningham's letter he realized that she was in error (Tr. 21094), and that GTI's response was directed toward answering the specific statements in Mr. Ray's letter and Mrs. Cunningham's allegations. Tr. 21096–97.

29. The only probative evidence in the record to indicate that GTI's letter was incorrect with respect to deletions from the Griffin show, insofar as the body of the program as defined by Sherck was concerned, was a memorandum to H. F. Gross dated November 12, 1969, prepared by Tom Jones, then operations director of WJIM-TV. Tr. 19244. The memorandum stated that the station had been scheduling longer breaks in the Griffin show than the network provided with the result that the program was being rejoined after the guests had been introduced. Bureau Exh. F.[18] On being shown the memorandum, Sherck, who had primary responsibility in this area (Tr. 19277–78) and who had not seen the memorandum in 1969, disagreed with its accuracy and stated that he would be very surprised if the station was "that sold out" of Griffin spots in 1969. Tr. 20349. Argel Resler, who served as a master control operator for WJIM-TV during the period in question (Tr. 20107, 20115), testified in the same vein, saying that he was reluctant to believe that the station enlarged the breaks on the Griffin show beyond that scheduled by the network because there were no credits leading to the commercials and therefore "no opportunity to cut out early." Tr. 20159. Sherck, H. F. Gross, and Resler all testified that they did not recall the station enlarging the breaks on the Griffin show during the time in question. Tr. 20322–23, 21088, 20159.

30. The ALJ concluded that the March 25, 1971 GTI letter was a "serious misrepresentation" designed to mislead the Commission on a matter of importance and that "the GTI lack of candor" was, in and of

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[18] Colgrove, who prepared the station's logs from approximately 1964 to 1975 (Tr. 19623–24), testified that there were probably extensions of the authorized local station breaks during the Griffin show but he could not unequivocally say they occurred. Tr. 19702–04.

itself, a basis for denial of GTI's renewal applications. I.D., Conclusions, paras. 61, 132. In reaching this determination, the ALJ attacked the statement in the letter denying that WJIM-TV inserted local material or advertising into network programs except when authorized and said that it was untrue in light of the evidence (1) that H. F. Gross had been advised in 1969 by the Jones memorandum that the station was overscheduling the authorized network breaks and (2) that in 1970 or 1971 Gross had ordered John Cundiff, the local TV sales manager for GTI, to continue to sell local and regional commercials for the Sunday NFL football game despite having been informed by Cundiff that the game was sold out. He also noted that the letter said nothing about the station's policy of joining the Griffin show late when the news program simply ran over for any reason. *Id.*, para. 59. The ALJ further concluded that GTI's approach in preparing the letter demonstrated that it was never its intent to provide a full and accurate answer to the Commission; that is, the draft was prepared within 24 hours after receipt of the Commission's letter and neither Gross nor Sherck made any review of the station's logs or conducted any investigation. *Id.*, para. 60. Finally, the ALJ rejected explanations by Gross and Sherck that their response was directed towards Mrs. Cunningham's complaint rather than the station's general policies on deleting portions of network programs. He said that Mrs. Cunningham's letter was general, and that the statement in the GTI letter that it was not GTI's policy or practice to insert locally-originated commercial material within the body of a network telecast could not be read to refer merely to the Griffin show. Rather, the answer was intended to resolve any suggestion that GTI may have been involved in a serious violation. *Id.* GTI ardently challenges the ALJ's resolution of this issue, denying that the GTI letter contained any misrepresentations or lack of candor.

31. We shall first review the ALJ's misrepresentation conclusions. Misrepresentation connotes "a false statement of an objective fact intentionally made to deceive." Fox River Broadcasting, Inc., 88 FCC 2d 1132, 1135, 50 RR 2d 1321, 1324 (Rev. Bd. 1982). In the case at bar, the Board is unable to conclude with the required degree of certainty that GTI's March 25, 1971 letter contained misrepresentations. *See Grenco, Inc.*, 39 FCC 2d 732 (1983).

32. Initially, we are not convinced that either the 1969 Jones memorandum concerning the Griffin show or Gross' instructions to Cundiff to continue selling local commercials for the NFL football games demonstrates that the GTI response was untrue in asserting that the station did not insert local material into network programs except when authorized. The Jones memorandum was never seen by Sherck, who drafted the GTI letter, and, in any event, its accuracy was disrupted at hearing by both Sherck, whose duties included ensuring that programs were on schedule

(Tr. 20319), and Resler, the station's master control operator.[19] And the instructions regarding the NFL football game are not pertinent since both Sherck and Gross stated that their 1971 response was specifically directed to the allgations in Mrs. Cunningham's letter regarding the Griffin show and the CBS Evening News. The letters of Mr. Ray and Mrs. Cunningham were directed to the question whether WJIM-TV inserted local commercials "so as to affect program content," and Sherck and Gross, who both considered program content to mean the substantive content of a program as distinguished from fill material, stated that the station did not do so. This answer was not plainly untruthful at the time, despite the fact that their definition of "program content" differed from that contained in WJIM-TV's CBS affiliation contract, because the Commission had not yet defined program content to include non-commercial matter in its evolving clipping policy. See paragraph 22, *supra*. Thus, any error of non-disclosure on the part of Sherck or Gross in describing WJIM-TV's deletion practices cannot rise to the level of misrepresentation. Nor do we agree with the ALJ that the preparation of GTI's response within 24 hours of receipt of the Commission's letter reveals that GTI never intended to provide a truthful answer. On the contrary, GTI's letter was a prompt response to the Commission's inquiry and was prepared on the basis of the personal knowledge of Sherck, the individual with overall responsibility in the traffic department, and Gross.

33. Furthermore, we disagree with the ALJ that GTI's failure to advise the Commission in its letter that it joined the Griffin show late whenever its local thirty-minute news program ran over for any reason turned the letter into a deliberate misrepresentation. Station WJIM-TV had no policy of intentionally broadcasting the local news beyond its scheduled thirty minutes, and such overruns occurred only when there were errors on the part of the news show personnel or late-breaking news. In con-

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[19] The ACLU asserts in its reply brief (p. 27) that a memorandum dated September 15, 1970, from H. F. Gross to Resler (Bureau Exh. 5) demonstrates that Gross was very much a willing participant in expanded station breaks on the Griffin show. We disagree. The memorandum referred to a discrepancy report concerning the garbling of a local commercial on the Griffin show because of insufficient time afforded by the network for adequate preparation of the commercial (Gross Exh. AA, pp. 12 and 14) and it directed Resler to prevent such occurrences in the future by running the local commecials as scheduled and joining the network at an opportune time. In this connection, Resler testified that occasionally he inadvertently failed to insert a local commercial or produced a sloppy break when the Griffin program was behind schedule and the network disengaged for a local commercial break within seconds after feeding the station a commercial of its own. Tr. 20161. He explained that the format of the show contained positions rather than precise time slots for commercials with the network specifying the sequences in which the network and local commercials would be shown. Tr. 20160. Sherck stated that the recalled the memorandum and interpreted it as a guideline for the master control operators to follow in the event the network's actions failed to allow sufficient time to prepare for a scheduled local commercial break. Tr. 20349–50. Resler, in essence, corroborated this explanation. Tr. 20287–89. We agree with GTI that the memorandum does not establish a general policy by GTI of inserting local commercials into the Griffin show.

trast, the station did have a policy of joining the Griffin show late whenever the network programming ran beyond 11:00 p.m., and GTI pointed this out in its letter. While the station may have ill-advisedly attempted to minimize its culpability by omitting mention of occasional inadvertent late joins of the Griffin show, that shortcoming in itself does not support a conclusion of misrepresentation.

34. In short, we accept GTI's explanation that its letter was literally true since it was narrowly responsive to Mrs. Cunningham's complaint rather than a statement of the station's general policies on deleting portions of network programs. Mrs. Cunningham's letter was concerned with the Lansing television stations' purported practice of inserting local commercials in lieu of substantive program content, specifically alleging that WJIM-TV carried out this practice on the Griffin show and the CBS Evening News, and Mr. Ray's letter asked to be advised of all the circumstances surrounding these allegations. In light of the nature of Mrs. Cunningham's letter, the instructions of Mr. Ray, and the evolving meaning of the term "program content" at that time, the response provided by Sherck and H. F. Gross cannot be read as palpably untrue or an intentional misrepresentation. *See KFPW Broadcasting Co.*, 47 FCC 2d 1090, 1095 n. 11 (1974), where the Commission stated that statements founded on a plausible interpretation, albeit narrow and self-serving, do not constitute willful and affirmative misrepresentations.[20] We simply find that the record evidence on this matter is insufficient to conclude that GTI intentionally set out to deceive the Commission by making a false statement of an objective fact.

35. We now turn to the ALJ's additional conclusion that GTI's March 25, 1971 response to the Commission's clipping inquiry was lacking in candor. Lack of candor is a "failure to be completely forthcoming in the provision of information which could illuminate a decisional matter." *Fox River Broadcasting, Inc., supra,* at 1137, 50 RR 2d at 1325. As with a misrepresentation, lack of candor may be disqualifying "if a willful intent to deceive is discerned." *Id.* While we conclude that GTI's March 25 letter was a technically accurate response to the Commission's inquiry, we believe that it nevertheless fell slightly short of the "high standards of punctilio" expected of Commission licensees, *Lorain Journal Co.* v. *FCC*, 351 2d 824, 830 (D.C. Cir. 1965), and warrants censure but not disqualification. In other words, GTI's response could have (and should have) explained more expansively what all of its deletion practices and policies were, but given the absence, in March 1971, of clear Commission guidance in this

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[20] Contrary to the implication in the ACLU's reply brief (p. 28), the ALJ did not make demeanor findings of any kind on this issue. While occasionally ALJ's may use language which is "in the nature of demeanor findings," although not labelled as such, by indicating for example, that a witness showed "marked opportunistic tendencies," such language was not present here. *New Continental Broadcasting Co.*, 88 FCC 2d 830, 840, 50 RR 2d 1117, 1126 (Rev. Bd. 1981).

area (see paragraphs 14 and 23, *supra*) and the essential specificity of the Commission's inquiry, plus all other relevant evidence, we cannot conclude that its error of omission was either intentional or sufficiently egregious to warrant disqualification. *Compare Fox River Broadcasting, Inc., supra* (slight comparative demerit assessed for slight lack of candor) *with George E. Cameron Jr. Communications*, 52 RR 2d 455, 473–475 (Rev. Bd. 1982), *recon. pending* (renewal licensee disqualified because of "egregious" and "stark" lack of candor). *See also RKO General, Inc.* v. *FCC, supra*, at 222–225. Moreover, we distinguish GTI's one-time, careless lack of candor in this matter—with no follow-up requests for clarification from Commission staff and no further uncandid replies—from the four sets of Commission inquiries and false, misleading, and evasive replies that characterized Station KORK-TV's conduct over a nine-month period between November 1970 and August 1971 and was largely responsible for its ultimate nonrenewal of license in *Western Communications, Inc. (KORK-TV), supra*. In GTI's case we do not have the "pattern of false or evasive reports" that characterized the nonrenewal licensee's conduct in *Lorain Journal Co.* v. *FCC, supra*, at 830, and in the KORK-TV case.

36. Given the previously noted facts that the Commission's clipping policies were evolving at the time and that certain of GTI's clipping practices were not specifically proscribed until two years after the Bureau's March 1971 letter, GTI's narrow answer to that inquiry is fairly explicable. Nevertheless, GTI's "technically accurate" response erred on the side of terseness and warrants some discredit. *See Fox River Broadcasting, Inc., supra*. The Commission has broad discretion in its choice of sanctions, and here, for the reasons discussed in paragraph 35, *supra*, we conclude that this unintentional and isolated instance lack of complete candor does not support denial of renewal but does form part of the basis for the lesser sanction that we herein prescribe.

37. *New Practices and Private Interest Issues*. These issues revolve around H.F. Gross' role in determining what news stories were to be aired by WJIM-TV and the extent to which his decisions were influenced by factors other than "news judgment" or newsworthiness. The ALJ found and we agree, that the most decisionally significant allegations explored under these issues centered on Gross' alleged suppression of news coverage of sporting events at the Lansing Tennis Club (LTC) because LTC's advertising account with GTI was in arrears and on GTI's submission to the Commission, and its subsequent withdrawal, of the so-called "Ferman letter" in connection with the LTC news suppression matter. We shall first address the alleged blackout of tennis club coverage.

38. During 1971 and 1972, GTI aired five television stories concerning the LTC including two LTC appearances on GTI's Martha Dixon Show, coverage of the opening of the LTC in December 1971, and GTI sports director Tim Staudt's coverage on December 26, 1972 of the first day of the

Western Closed Indoor Tennis Championship involving early teen-age participants. ACLU Exhs. 200, 202; Bureau Exhs. 52, 82 para. 6, 82A p. 10; Tr. 6177, 8359, 8401–2, 8409–10, 8415–6; I.D., Findings, para. 118; Conclusions, para. 25. On the next day, Staudt received the following memorandum from H.F. Gross (Bureau Exh. 29; I.D., Findings, para. 120):

> I heard your story last night at both 6 and 11 on the Tennis Tournament being conducted at the Lansing Tennis Club. These people owe us $1,500, which is a year overdue and are making no effort to pay us. Considering these circumstances, I do not want to give them any publicity on the Club or any of their activities.

No further coverage was given to LTC events, including the remainder of the Western Closed Indoor Tennis Championship, even though, contrary to Staudt's expectations, not all of the local entrants were eliminated on the first day of the tournament. I.D., Findings, para. 121, Conclusions, para. 26; Tr. 8383–4. Then, on April 23, 1973, H.F. Gross sent the following memorandum to Staudt with a copy to talk show host Martha Dixon (Bureau Exh. 32):

> We are still experiencing problems in collecting from the Lansing Tennis Club. They have not kept the promise they made to me several months ago, and I want absolutely no coverage or news about their Club until I give you a further okay. You might let Mrs. Schultz know that I am disappointed with her refusal to keep her promise and that unless we receive payment we will take it to court for further action.

Television coverage of the LTC did not resume until July 1973 when the Western Outdoor Closed Tournament was held here. I.D., Findings, para. 121, Conclusions, para. 26. At this time, the LTC debt to GTI had been reduced from more than $1,700 to $261.50. Bureau Exh. 49.

39. GTI offered the testimony of H.F. Gross and Tim Staudt, *inter alia*, to show that Gross' intent in writing the above memoranda was not to "black out" coverage of the LTC but merely to prevent the club from receiving unnecessary free publicity and that Staudt understood this, did not black out the LTC, and exercised only prudent news judgment in deciding which sports events to cover there. I.D., Findings, para. 120–121, Conclusions, para. 25. Also, Martha Dixon testified that she "didn't feel that" the April 23, 1973 memorandum was "an order and instruction from H.F. Gross . . . to black out any coverage of the Lansing Tennis Club" and that she has never been instructed to either black out or not use a certain guest on any program. Tr. 6178–9, 6200. However, she admitted on redirect examination that it was clear to her from the memo that Gross did not want coverage of the tennis club (Tr. 6206). Dixon also testified that she did not have the LTC as an advertising account and was not requested to assist in collection of the account, that her association with LTC owner Mrs. Betty Schultz was a social one, and that she did not

discuss with Mrs. Schultz "the details of collection of the money, amounts of the money, or what the consequences would be if they were on the air." Tr. 6173, 6187. However, Mrs. Schultz testified that Ms. Dixon called her frequently about the LTC's overdue bill and had cancelled a tennis lesson and explained that her boss had told her to stop patronizing the club because payments to GTI had not been kept up. I.D., Findings, para. 122. Nevertheless, GTI president James Gross and his family were active members of the club during the time period in question. *Id.* The ALJ relied on the clear import of the two memos described above and the fact that Staudt had asked James Gross for permission before covering the July 1973 tournament in concluding that, based on GTI's private interest and not news judgment, H.F. Gross had ordered Staudt to cease covering the LTC. I.D., Conclusions, para. 26. He further determined that this single incident of news suppression was insufficient to serve as an independent basis for, but did lend support to, his decision to deny renewal of GTI's licenses. I.D., Conclusions, paras. 26,124, 135.

40. In its exceptions, GTI argues that the ALJ erred in concluding that GTI's coverage of the LTC was dictated by a concern for its private interest. It claims that it covered all 1972–1973 LTC tennis matches that it considered newsworthy, including events occurring after the Gross memoranda and before the LTC advertising bill was fully paid, and that the coverage was comparable to that given to other sporting events in Lansing. GTI states that the Gross in-house memoranda were not intended to prohibit coverage, were not taken literally by Staudt, and did not affect the actual coverage of matches at the LTC. Also, GTI asserts that FCC policies on sports programming were not formally defined at that time, that subsequently adopted policy cannot be a basis for drawing adverse conclusions against it, and that, because the First Amendment gives broadcasters a right to choose program content, Commission action must be based on a clear and compelling showing that GTI acted improperly. The ACLU replies that GTI's First Amendment argument is unavailing because it ignores the public's paramount interest in receiving information, that the Gross memoranda constitute sufficient extrinsic evidence of wrongdoing to support the ALJ's conclusion, that Gross' allegedly strong policy against "free publicity" is an insufficient basis for reversing the ALJ, and that LTC coverage did not resume until its advertising bill had been reduced from more than $1,700 to $261.

41. We agree with the ALJ that the Gross memoranda on the Lansing Tennis Club overstep the boundaries of a mere concern that "free publicity" be avoided and are a proper subject of Commission concern because they constitute some extrinsic evidence of an improper intent to black out coverage in order to induce the LTC to pay its delinquent advertising bill. *See Discriminatory Programming*, 25 FCC 2d 705, 707 (1970); *Michael D. Bramble*, 58 FCC 2d 565, 572, 36 RR 2d 845, 854 (1976). Although the

record does not show with certainty whether the lack of LTC coverage from December 27, 1972 until July 1973 was caused at least in part by these memos or instead was a product of unfettered news judgment, we believe that they may have had an improper inhibitory effect on GTI sports coverage of the LTC, especially since GTI sports director Staudt found it necessary to get permission from, James Gross before covering the tennis club in July 1973. Also, the record shows that WJIM-TV did not cover or even report the scores from the last two days of the December 1972 Western Closed Indoor Tennis Championship, even though it had found the tournament sufficiently newsworthy to cover it with a feature story on the first day, which coincidentally is the day before Staudt received the first Gross memorandum. Staudt's explanation that he planned in advance to cover only the first day of the tournament because no local players were expected to survive elimination beyond that date is reasonable. However, it fails to account for the non-reporting of scores on the remaining days given that some local players did in fact survive beyond the first day. There is nevertheless some record evidence, which supports GTI's news judgment argument, that GTI may have covered only the first day of the July 1973 Western Closed Outdoor tournament and may not have covered at all the subsequent December 1973 Western Closed Indoor championship, which was held at a time when the LTC advertising bill was no longer an issue. Tr. 8430–31 (testimony of LTC owner Mrs. Betty Schultz). On balance, we are pesuaded that the Gross memoranda probably did improperly inhibit GTI news judgement concerning the LTC based on the licensee's private interest in securing payment on the delinquent advertising bill. We therefore conclude that this incident must be weighed against GTI, although it is a wholly insufficient basis to warrant disqualification of the licensee.

42. We now turn to the Ferman letter matter. On February 1, 1974, the Broadcast Bureau sent GTI a letter (Bureau Exh. 72) requesting its response to various allegations of news blackouts. As part of its reply, due on February 28, 1974, GTI sought a letter from the LTC concerning the coverage it received from GTI. On February 22, LTC managing partner (now owner) Mrs. Betty Schultz sent H.F. Gross the following letter (Bureau Exh. 52; ellipsis in original):

> We have read much about you and your TV station in local newspapers.
>
> You are in a very vulnerable position. As a result on several occasions we have shared that dubious distinction . . . unhappily.
>
> As was reported in a newspaper, we do promote many newsworthy events during the year and we have enjoyed spot coverage from WJIM sports on several of these. TV programs and memory pass swiftly, but I do remember coverage of two of our big annual tournaments: the Western Indoor Closed Tournament in December 1972 and 1973; and the Western Closed in July 1973.

> We also had generous coverage on our opening day January 19, 1972.

Gross was dissatisfied with the personal reference in this letter, and he forwarded it to GTI's communications counsel noting "I don't care much for the opening paragraph of Mrs. Schultz's letter and will ask her for another one if you think it's advisable." I.D., Findings, parar. 125; ACLU Exh. 172. Counsel recommended that a new letter be obtained with three revisions: (1) the opening portion be deleted as extraneous; (2) an erroneous date be deleted; and (3) a concluding statement be added to express the opinion that WJIM-TV coverage of the tennis club had been adequate and fair. Bureau Exh. 82. Gross then asked sports director Staudt, who had obtained the first letter from Mrs. Schultz, to again contact her and obtain a revised letter by 5 P.M. that day so that it could be filed by the due date for the response to the Commission's inquiry. I.D., Findings, para. 126.

43. Since Mrs. Schultz was in the hospital undergoing knee surgery, Staudt requested that LTC assistant manager and head pro Richard Ferman, who was in charge during Mrs. Schultz's absence, execute the revised letter, which had been prepared by GTI's counsel, and he did so on February 26, 1974. I.D., Findings, paras. 126–7. The letter states (Bureau Exh. 53):

> This is in regard to the television sports coverage on WJIM T.V. of the Lansing Tennis Club.
>
> Television programs and memory pass swiftly, but I do remember that you covered our 2 big annual tournaments—the Western Indoor Closed tournament in December 1972 and 1973 and the Western Outdoor Closed tournament in July 1973.
>
> We also had generous coverage of the opening of the Lansing Tennis Club.
>
> I regard this as fair and adequate coverage of the major events sponsored by our organization.

Two days later, while still in the hospital, Mrs. Schultz was informed about the Ferman letter and arranged to meet with Harold and James Gross and Tim Staudt. She told them that she was unhappy with the whole matter and objected to all the changes in wording from her original letter largely because they were made without her knowledge but also because she disagreed with Ferman's "fair and adequate" characterization of GTI's coverage of the LTC; she also stated she wanted nothing more to do with the matter and requested the return of both letters. I.D., Findings, para. 130; Tr. 8353–58, 8369–76, 8413, 8418–26, 8430–33, 8484–86, 8498–514.[21] One week after this meeting, GTI's counsel filed with the

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[21] From these cited transcript pages of Mrs. Schultz's testimony, the Board infers that her primary objection to the Ferman letter was the bare fact that it was prepared without her having first been consulted, that her next most important objection was that she didn't believe GTI coverage was "adequate and fair" because GTI typically covered only the first day of the two U.S. Lawn Tennis Association-sponsored tournaments held at the LTC and did not cover other tournaments she thought were newsworthy, and, last, that she objected to the deletion of her opening two paragraphs.

Commission a letter withdrawing reliance upon the Ferman letter. The ALJ concluded that GTI did not submit the Ferman letter with intent to deceive the Commission, and no deception occurred; however, he held that there was a misrepresentation in the method that Staudt used to obtain the letter from the LTC. I.D., Conclusions, parars. 28–29, 125.

44. In its exceptions, the ACLU claims that GTI management was aware of Staudt's failure to inform Ferman about the differences between the two letters and that GTI's submission of the Ferman letter with knowledge that it was "inaccurate" was a mispresentation to the Commission. The ACLU also questions the relevance, timeliness, and *bona fides* of the alleged GTI withdrawal of reliance of the Ferman letter. GTI denies that it engaged in misrepresentation in obtaining Ferman's signature on the revised letter or in filing the letter with the Commission, and asserts that its withdrawal of reliance on the letter was timely and in good faith.

45. We affirm the ALJ's determination that GTI neither misrepresented facts to nor lacked candor with the Commission concerning the Ferman letter; however, we disagree with his conclusion that GTI engaged in any misrepresentation in obtaining the letter in the first instance. Falsity, materiality, and intent are three of the essential elements in establishing a misrepresentation, *Fox River Broadcasting, Inc., supra*, and the record evidence fails to demonstrate the presence of these elements. Both the Schultz and Ferman letters recite the identical objective facts, namely, GTI's coverage of LTC's opening and its tournaments in December 1972 and 1973 and July 1973. The key differences in the letters are: the deletion of the first two paragraphs of the Schultz letter, which obliquely refer to unfavorable publicity concerning GTI; the implication in the Schultz letter that the LTC has newsworthy events in addition to the December and July tournaments, in contrast to the Ferman letter's characterization of these tournaments as "our 2 big" events; and the addition of the conclusory opinion in the Ferman letter that GTI's coverage was adequate and fair. We do not believe that these modifications have been shown to be either false or material. While Mrs. Schultz's unhappiness with the revised language and the fact that she had not been consulted are clear, this evidence cannot be equated with a finding of falsity or materiality, only pique. As the actual signatory and the second-in-command at the LTC, Ferman must take some responsibility for the contents of "his" letter, and the fact that Mrs. Schultz might not have signed the same letter is not dispositive of misrepresentation. While the ACLU argues that Staudt knew that Mrs. Schultz would not be available to revise her original letter when he called the LTC office and, consequently, GTI took advantage of this situation to mislead Ferman into signing a letter more supportive of GTI than Mrs. Schultz would have permitted, this line of reasoning is highly speculative and not adequately supported by the record. For instance, while it is disputed whether Mrs.

Schultz actually mentioned her impending hospitalization to Staudt, Ferman did have independent knowledge of GTI's coverage of the LTC, and Ferman admits having been at least generally advised by Staudt about the differences between the two letters. I.D., Findings, para. 127. Under these circumstances, we believe that GTI's use of the Ferman letter, in the face of Mrs. Schultz's unavailability and a time deadline, was not a misrepresentation nor was misrepresentation proven as to GTI's obtaining of the Ferman letter. GTI's subsequent withdrawal of the letter from the Commission was prudent conduct in the face of Mrs. Schultz's extreme unhappiness and her request for its return, and the withdrawal was accomplished in timely fashion. Thus, we conclude that no misrepresentations have been established under this issue, and this matter does not reflect adversely on GTI's qualifications to remain a Commission licensee.

46. With regard to the other allegations of news suppression or slanting, the ALJ exhaustively considered them (I.D., Findings, paras. 17–116, 132–163) and found, based on the great weight of reliable evidence, that GTI could not be found in any instance to have attempted to slant, distort, or suppress news (I.D., Conclusions, paras. 4–22, 27). In its exceptions, the ACLU argues that the ALJ erred in failing to find that GTI suppressed news coverage of the Lansing City Council, Mayor Graves, and the State Capitol, gave special treatment in news and other programming to specific preferred advertisers, and blacked out news coverage of its advertisers' competitors. GTI replies that it neither suppressed news coverage nor specially treated its advertisers.

47. We agree with GTI that the ALJ properly weighed the evidence and found that the allegations of news suppression and special treatment of advertisers were clearly not proven. For example, the ACLU alleged that GTI blacked out coverage of Lansing City Councilmen Moore, May, Adado, and Ferguson because they opposed GTI's application for a local CATV franchise. All councilmen (except for Moore), the City Attorney, and Mayor of Lansing during the time in question testified to fair treatment and lack of news suppression by GTI (I.D., Findings, paras. 58–66), and incomplete film log entries show that the four aforementioned councilmen were covered by GTI (I.D., Findings, paras. 67–68). The ALJ found that this testimony was more reliable than that of Councilman Moore, who testified to the presence of a blackout, because Moore's demeanor exhibited a strong bias against GTI, he had signed a prehearing affidavit denying knowledge of any blackout of councilmembers, and he had a CATV interest competitive with that of GTI. Similarly, the testimony of former GTI TV news director Robert McCall, who stated that he had discussed a blackout order with H. F. Gross, was discredited because he had previously denied any such discussions in a pre-hearing deposition and in statements to Commission field investigators. Also, the

testimony of former (January 1967-August 1968) GTI news reporter William Applegate that H. F. Gross did not want to see on the air his "enemies" at the City Council was rebutted by the contrary testimony of H. F. Gross, GTI employees during the time in question, and the City Councilmembers themselves. The record shows that Applegate did tell other GTI employees to black out coverage of certain Councilmembers but that these instructions were overridden by GTI management. In our view, the ALJ's findings exonerating GTI on this issue are amply supported by the weight of reliable and credible evidence. And we reject as speculative the ACLU's argument that those Councilmembers who testified favorably to GTI did so from fear of "incurring the wrath of the local TV station" (Br. at 67).

48. Similarly, the allegations that GTI blacked out Mayor Graves and the State Capitol also turn out upon examination to be wholly without merit. The record demonstrates that H. F. Gross was indeed concerned, because of the presence of the Michigan State Capitol in Lansing and because GTI employed many young, inexperienced reporters, that GTI news reporting could be manipulated by politicians seeking free publicity. He indicated in a 1970 in-house memorandum that he wanted an increased in GTI's film budget to be used for "special creative news stories" as opposed to additional "Graves, Ryan and Waldron political coverage." ACLU Exh. 28. (Ryan was the Majority Leader and Speaker of the Michigan House of Representatives, and Waldron was Ryan's predecessor.) The ALJ closely examined the record evidence and found that H. F. Gross was very much concerned with providing coverage of politicians only to the extent that they were the source of newsworthy stories and avoiding coverage of unimportant matters that would serve only a politician's interest in obtaining free publicity. He also found that GTI did in fact regularly provide coverage of politicians, including Mayor Graves, on items that it considered newsworthy. Based on our examination of the record, we see no reason to disturb the ALJ' disposition of this matter.

49. Finally, the ALJ also found that GTI did not specially treat its advertisers but instead was concerned with avoiding the possible manipulation of its news coverage to provide free publicity to commercial establishments. H. F. Gross did not want the names of businesses to be used in news stories unless they were essential to the story. It is true that he was concerned that his advertisers would be upset if unnecessary publicity in news stories were given to their competitors. But it is equally true that Gross also did not want the names of his own advertisers given unnecessary publicity. The record shows that there were occasions when advertiser names were mentioned on GTI news stories and Gross responded by sending memoranda to GTI staff criticizing the overly commercial nature of the story and ordering the curtailment of unnecessary publicity in future stories. We agree with the ALJ that no findings

adverse to GTI can be made based on this record and that the ACLU's allegation that GTI blacked out news coverage of its advertisers' competitors is unsubstantiated

50. *Taped Weather Issue.* This issue was added to determine whether GTI violated Section 73.1208 of the Rules, 47 CFR 73.1208, which provides in pertinent part:

> Any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed, or recorded. The language shall be clear and in terms commonly understood by the public. . . .

The ALJ found that WJIM-TV taped the weather part of its 11:00 P.M. news program between October 1973 and September 1974 yet failed to give notice or air any type of disclaimer as required by Section 73.1208.[22] Based on the testimony of Charles Snider[23] that weather forecasts are "highly perishable" products, the ALJ found that weather forecasts are inherently program material "in which time is of special significance" and concluded that GTI repeatedly and willfully violated Section 73.1208. GTI excepts. While we agree with the AJL that time is of special significance with respect to weather forecasts under Section 73.1208, we disagree that the violations shown on this record adversely impact on GTI's qualifications, particularly since the licensee took reasonable steps to monitor and update its taped reports so as to minimize the significance of the time factor.

51. GTI's practice was to tape its live 6:00 P.M. weather report for showing on the 11:00 P.M. news show, but also to replace the taped report with a live update if, in its judgment, the weather conditions or forecast had changed significantly since 6:00 P.M. On evenings when the tape was run, current figures for temperature, air pressure and the like were superimposed on the screen. The ALJ noted, however, that during the period in question, the Weather Service's 5:10 P.M. forecast (which was the basis for the 6:00 P.M. weather show) was revised by the Detroit office some 57 weekninghts and WJIM-TV ran a live forecast at 11:00 P.M. on only 9 of those nights. Thus, 48 weather forecasts were offered to the viewing public as current when the Detroit Weather Bureau determined that its 5:10 P.M. forecast was no longer accurate. I.D., Findings, paras. 119, 129. The Board finds that this lack of live updates is not in itself dispositive of violations of Section 73.1208 by GTI. First of all temperature changes of a few degrees or other forecast updates such as "we are

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[22] In September 1974, disclaimers were inserted after the news and by 1975 the broadcasts were again live.

[23] Mr. Snider, the head of the National Weather Service Forecast Office at Detroit, was qualified as an expert meteorologist.

expecting some fog for Lansing and the vicinity" were often handled by superimposing the revised figures on the screen or by having the news anchorman insert a live comment, rather than having the weatherman return to the station. Tr. 23430–31, 23433. Second, the Weather Bureau updates were often of relatively minor significance. Tr. 18621. Indeed, there is some dispute in the expert testimony as to what constitutes a significant change in weather forecasts. A sampling of the conditions which caused the Detroit office to change its forecast included "extensive fog" (October 9, 1973), and a change from "cloudy with a chance of showers" to "becoming sunny and warmer" (October 17, 1973). According to Mr. Snider, such changes made by the Detroit Weather Service Forecast Office were significant changes (I.D., Findings, para. 277); however, Gordon Barnes, another expert witness in meteorology (Tr. 19128–36) with extensive experience in weather forecasting, described the above changes as "very ambiguous" or "not very critical." I.D., Findings, para. 277. Finally, GTI urges that absent record evidence of video tapes of the 48 nights in question, we may not speculate as to whether the forecasts had in fact altered significantly, and if so, whether the changes went unnoted by updated projected figures or live news anchormen. We agree. However, in doing so, we do not condone GTI's undoubted occasional failure to assure that the most current and accurate data available was shown.[24]

52. Section 73.1208 has never been held to apply to weather forecasts *per se*. Although we agree that time is of special significance as it relates to weather reports, we recognize, as the ALJ did, that the underlying purpose of the rule is to prevent deception of the public. It is clear from the record that GTI's practice derived not from any attempt to mislead the public but rather as an accommodation to its weather person who protested his long working hours. I.D., Findings, para. 263. With respect to the accuracy of the information disseminated, GTI generally updated its weather map, temperature, air pressure, etc., by superimposing these figures on the pre-recorded weather report. Id., para. 265. Had these procedures been accompanied by a more precise and routine updating

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[24] Illustrative of GTI's occasional failure to disseminate the most accurate of forecasts is the following: On June 7, 1974, the Weather Service issued its 5:10 P.M. forecast which predicted "mostly cloudy with a few showers or thunderstorms likely tonight." By 10:20 P.M. the Weather Service at Lansing issued a severe thunderstorm warning and at 11:00 P.M., the thunderstorm warning was still in effect and the thunderstorm line (which was defined) was increasing in speed. Next, at 11:30 P.M. the Lansing Office issued a further bulletin on the storm and requested "immediate broadcast." WJIM-TV did not broadcast a "severe thunderstorm warning" until 11:41 P.M.—one hour and 20 minutes after the first bulletin, 41 minutes after the issuance of the "special weather statement," and eleven minutes after the scheduled end time for the 11:00 P.M. news program. I.D., Findings, para. 277. The record does not show, however, that a failure of this magnitude was typical or frequent. By contrast, where, for example, it snowed heavily on an evening when the forecast was for snow flurries, the weatherman returned to the studio for a live report. Tr. 18502.

when weather conditions changed, the concerns underlying Section 73.1208 would have been entirely alleviated. Nonetheless, based on an overview of GTI's practices, we believe these technical infractions were isolated incidents rather than a pattern of deliberate violations. Finally, nothing in analogous precedent cited by the ACLU changes our view that GTI acted in good faith. Unlike *Action Radio, Inc.*, 51 FCC 2d 803 (1975), where the station broadcast weather temperatures for suburban environs without a factual foundation for these readings, GTI at all times reported current readings. In *WPIX, Inc.*, 68 FCC 2d 381, 384–5 (1978), where the use of old newsclips was considered "peripheral" to accurate news reporting despite the use of film of prior events such as student demonstrations in connection with current news stories, it was held that the licensee did not "engage in a course of conduct to distort, slant, falsify or misrepresent the news or that the public was deceived about a matter of significance. . . ." Likewise, here, in a patently less egregious case, it is clear that GTI was not engaged in a course of conduct to deceive the public, and we find that any isolated incidents amounted to little more than inadvertent negligence. And in Quality Broadcasting, 13 FCC 2d 642, 658 (1968), only a forfeiture was imposed in a revocation proceeding where the licensee deliberately misled the public by failing to identify programs as taped, editing out material indicative of a pre-recording, and by making continous references to taped material as live. By contrast, there is no evidence here that GTI intentionally reported the weather in-accurately. Thus, we conclude that while GTI's weather broadcasting methods led to occasional inaccuracies and are expressly criticized here as a model for other broadcasters, there were only technical violations of Section 73.1208 of the Rules with no intent to mislead the public, and, therefore, this issue is resolved in GTI's favor.

53. *Contour Map Issue.* In this issue, the ALJ explored whether GTI misrepresented the 0.5 mV/m contour of Station WJIM (AM) on its rate cards or promotional literature distributed to the public or potential advertisers. The ALJ found that GTI prepared and distributed five different promotional pieces which contained contour maps that were deceptive because they significantly exaggerated WJIM's coverage. He concluded that, while the evidence did not warrant disqualification on this basis alone, it contributed to the overall disqualification of the renewal applicant. We agree with the ALJ insofar as we conclude that the contour maps were misleading and that the issue should be resolved against GTI and contribute to the ultimate remedy we deem appropriate. See paragraphs 62 and 78, *infra*.

54. In 1961, GTI prepared a new contour map depicting WJIM's 0.5 mV/m contour. The map was drawn by the station's art director, Elmer Davis, at the direction of its chief engineer, Carl Onken. The Davis map showed coverage to two communities, Jackson and Durand, Michigan, not cov-

ered on the predicted contour map filed with the Commission as part of the station's 1961 application. Bureau Exhs. ZZZ, FFFF, Att. D. GTI management did not have the map reviewed for accuracy. Tr. 24109, 24161. In 1967 the Davis map was revised but the depiction of the 0.5 mV/m contour remained almost identical.[25] In addition, a notation "1000 Watts, Non-Directional" was added, but no reference to WJIM's nighttime power of 250 watts was included. Neither Onken nor James Gross was involved in preparation of this map. Tr. 24043, 24084, 24123, Bureau Exh. AAAA. A third map was prepared in August 1972 at the request of Ronald Voss, the station's radio sales manager. James Gross approved this request but neither he nor H. F. Gross approved the actual map before it was printed. Tr. 23979–80, 24044–50, 24125–6, GTI Exh. 000. The map showed two contours drawn in red which were unlabeled but almost identical to the 0.5 mV/m and 0.1 mV/m contours drawn on the 1967 map. Bureau Exh. CCCC. (See note 25, *supra.*). The Bureau introduced an overlays map comparing the 1961 map on file with the Commission modified to account for interference from area stations, with the 1972 map. That evidence shows that the 1972 map's inner curve, assumed to be the 0.5 mV/m contour overstates the station's coverage by 1,333 square miles or 36% and the interference-free primary service area by 1,588 square miles or 46%. This means the covered population is overstated by 174,408 persons or 32%, the number of persons within the pirmary service area is overstated by 189,236 or 36%, and those receiving primary service is overstated by 236,596 or 49%. Bureau Exh. FFFF. The map also contained the notation "1000 watts" again without reference to the 250 watts nightime power actually authorized. If one assumes that the 0.5 mV/m contour (or inner curve) represents both day and nighttime coverage, the actual nighttime coverage is overstated by 9,436%. Bureau Exh. FFFF, p. 5; Bureau Exh. GGGG, pp. 1–2.

55. H. F. Gross believed that advertisers based purchases on population figures rather than contour lines, and he obtained new population figures for the three-county Lansing Metro Area for inclusion in the 1972 promotional piece prior to its printing. Tr. 24044–5, 24125–6, GTI Exh. CCC, Tr. 24045. He had nothing to do with the drafting of the contour lines on the 1972 map. Tr. 24045–6. James Gross stated that he did not use contour maps in his sales presentations, but also admitted that he and H. F. Gross distributed "sales literature" which could include contour maps. Tr. 24137, 24172–3. The record shows that on at least two occasions a potential advertiser and an advertising agency requested and were sent copies of WJIM's contour maps. Bureau Exh. HHHH, pp. 2–3, 7–8. In addition,

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[25] The 1961 and 1967 maps both used the measure 500 uV/m which is equivalent to 0.5 mV/m. The 1967 map also depicted the 100 uV/m contour (0.1 mV/m). Only the 0.5 mV/m contour is specifically in issue.

Ronald Voss used the 1972 maps to show potential advertisers the station's primary coverage area. Tr. 23974–5. Also, James Wall, a WJIM salesman, used the 1972 map routinely when dealing with advertisers or agencies. Tr. 24006, 24009.

56. A fourth promotional piece was printed in March 1973 at the suggestion of Alden Shipley, who succeeded Voss as radio sales manager and with the agreement of James Gross. The new advertising brochure consisted of the 1972 map with a new station profile on the reverse side. Shipley distributed the new materials to advertisers and agencies. Both he and James Wall initially believed that the outer circle of the map depicted the daytime contour and the inner circle the nighttime contour. Tr. 23983–4, 23986–90, 23964, 23999–24002, 24009–10. However, in the fall of 1973, Shipley learned that he was mistaken as to what the contour lines on the map represented and instructed his staff to stop referring to the contours as daytime and nighttime. The map, however, continued to be used. I.D., Findings, para. 380.

57. In December 1973, Shipley had a fourth map prepared. It had one contour line which was labeled as the daytime 0.5 mV/m contour and closely paralleled the contour line on the 1972 map. At Shipley's request, the map also noted that the station had 1000 watts day and 250 watts night. I.D., Findings, para. 383. Also at Shipley's request, Onken and James Gross approved the map's accuracy, although James Gross checked only the copyright notice and the nighttime power. The map included the same population information as in 1972 although H.F. Gross knew Lansing had grown. One thousand copies of the sales brochure were printed and the map was distributed as before. I.D., Findings, para. 384–6. A new contour map was drawn up in May 1975 after James Gross requested Onken to review the accuracy of GTI's maps. This was in response to a letter in February from Washington counsel urging clients to review their promotional material to insure they were not misleading. Onken recommended only a change in the profile section to make the power representation more accurate. The new map incorporated this change but did not change the contour line. This map was used until GTI learned in 1977 that a petition to add an issue on the contour maps was being considered in this proceeding, at which point all use of coverage maps by WJIM was discontinued. Bureau Exh. IIII, JJJJ, EEEE, KKKK, p. 5, Tr. 24110-11, 24130–31.

58. The Commission has an old and well-established policy that licensees must not engage in misleading, inaccurate, or ambiguous promotional references to their stations' coverage, power, or location. *Key Broadcasting Corp.*, 60 FCC 2d 575, 38 RR 2d 105 (1976); paragraph 60, *infra*. Licensees are expected to deal candidly with the public, and therefore the Commission does not tolerate the use of inaccurate and exaggerated coverage maps which deceive or mislead potential adver-

tisers or the public. *Universal Communications of Pittsburgh, Inc.*, 74 FCC 2d 617, 17 RR 2d 1262 (1969), *recon. denied*, 21 FCC 2d 542, 18 RR 2d 491 (1970).

59. It is apparent from the evidence in this record that GTI seriously, repeatedly, and continuously exaggerated the coverage of WJIM(AM) on its contour maps in use from 1961 until 1977, and that these inaccurate and misleading maps were widely distributed to potential advertisers during those years. All told, six promotional pieces, including five different maps, were printed and distributed during the years in question and all of them significantly exaggerated the 0.5 mV/m coverage compared to the coverage predicted on the map on file with the Commission as part of WJIM's 1961 application. See paragraph 54, *supra*. In addition, from 1967 until December 1973, the maps contained a reference to 1000 watts power without any indication that nighttime power was 250 watts. Until the fall of 1973, the sales staff also mistakenly represented to advertisers that the unlabeled contours on the 1972 map were day and night contours, thereby exaggerating the actual nighttime coverage by over 9,000%. In addition, specific communicaties shown as covered by the 0.5 mV/m contour on the promotional maps, but not covered on the map on file with the Commission, were represented as covered to advertisers. In the face of this substantial evidence, GTI argues that the inaccuracies were unintentional and not the product of GTI management, and that the Commission's policy regarding the use of promotional literature did not come into being until 1968, citing *Public Notice, Announcements Specifying FM Station Power*, 13 RR 2d 1638 (1968), seven years after the troublesome contour line was first drawn by Mr. Davis. Absent evidence that its principals deliberately misled advertisers or the public, GTI argues that its basic qualifications to remain a licensee should not be affected.

60. We disagree that the Commission did not address the subject of inaccurate promotional representatons until 1968. As early as 1955, in *Tulsa Broadcasting Co.*, 12 RR 1256 (1955), where a licensee advertised figures for antenna height and height above average terrain in excess of those specified in its permit and exaggerated its principal city, Grade A, and Grade B contours on the map it distributed, the Commission stated that the inaccuracies went "beyond the bounds of reasonable advertising boasts" and that it would review future station performance in light of these practices. 12 RR at 1266. Similarly, in *Gulf Television Co.*, 20 FCC 734 (1956), the Commission reviewed an aplicant's promotional announcements respecting station location and warned against "studied attempts . . . to conceal the true location of broadcast facilities." 20 FCC at 767. *See also Broadcast Station Identificaton Requirements*, 10 FCC 2d 399, 11 RR 2d 1607 (1967). But even assuming GTI had no actual notice of Commission policy until the 1968 Public Notice, *supra*, regarding announcements of FM station power, we point out that the misleading

promotional practices established on this record continued beyond that date for nine more years until 1977, when the prospect of litigation finally led to a cessation of use of all maps.

61. With regard to its intent, we agree with GTI that the evidence does not establish actual involvement by H.F. or James Gross in preparation of the misleading maps. The 1961 map was prepared by the staton's art director, Mr. Davis, and subsequent maps were prepared at the suggestion of the radio sales manager with the exception of the last map in 1975, which was requested by James Gross. Although the station's chief engineer, Mr. Onken, reviewed the December 1973 map for accuracy, James Gross reviewed only some of the material on that map but did not check the contour, and apparently H.F. Gross did not review any of the maps. There is also evidence, however, that both Grosses made use of the promotional materials and that while H.F. Gross expressed his faith in populaton figures he made no effort to update Lansing's changed population on the 1973 maps. Nor did he verify the accuracy of any of the maps with qualified engineers during the period they were being widely used and distributed by the station's sales staff. Thus, while actual involvement by GTI management in the preparation of misleading maps is not shown, it is also apparent that there was active indifference and disinterest by these principals regarding use of these materials over a period of years. Even in 1973 and 1975, when James Gross was alerted by the staff or by counsel to the need to check the maps for accuracy, neither he nor H. F. Gross took sufficient interest to personally review the depiction of the crucial 0.5 mV/m contour line.

62. Thus, while we agree with GTI's premise that it should not be disqualified for misleading promotional practices where its principals are not shown to have acted deliberately to mislead, *see Key Broadcasting Corp., supra*, we point out that a licensee has broader responsibility to adequately supervise and control its stations' operations and practices, including the activities of subordinates, and cannot abandon those responsibilities in order to escape accountability. *See Continental Broadcasting, Inc.* v. *FCC*, 439 F.2d 580 (D.C. Cir.), *cert. denied*, 403 U.S. 905 (1971); *George E. Cameron, Jr. Communications, supra*. Furthermore, as stated in *Key Broadcasting Corp., supra*, 60 FCC 2d at 578, 38 RR 2d at 109, the Commission will not "condone inaccurate or ambiguous promotional references . . . whether deliberate or inadvertent." Contrary to GTI's position, decisional weight (e.g., comparative demerits) is accorded to even unintentional misleading promotional practices. *Id.; Bie Broadcasting Co.*, 81 FCC 2d 1, 48 RR 2d 471 (Rev. Bd. 1980); *Gainesville Media, Inc.*, 70 FCC 2d 58, 42 RR 2d 489 (Rev. Bd. 1978), *recon. denied*, 70 FCC 2d 143; *Town and Country Radio, Inc.*, 65 FCC 2d 694, 41 RR 2d 151 (Rev. Bd. 1977). In fact, short-term renewals have been imposed on the basis of promotional practices such as those described in this record. *See*

Century Broadcasting Corp., 30 FCC 2d 733, 22 RR 2d 221 (1971); *Universal Communications of Pittsburgh, Inc., supra.* In view of the nature of the misleading material, the extensive period over which it was disseminated, and the active disinterest of GTI management in attending to the problem, we conclude that while this conduct does not support GTI's disqualification, it does form part of the basis for a lesser remedy.

63. *Labor Issue.* The labor issue was added to this proceeding by the Commission to determine whether GTI engaged in labor practices inconsistent with the national labor policy expressed in the National Labor Relations Act (NLRA) and, if so, the effect on its character qualifications. The events in question relate to GTI's conduct during and after a 1973 union organizing drive at its stations. The ACLU alleges that GTI engaged in unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the NLRA.[26] The ALJ found only a single violation of the NLRA by GTI and concluded that this incident did not reflect adversely on GTI's overall qualifications. We agree.

64. First, the ACLU argues that GTI exceeded the bounds of protected speech in urging its position against unionization in four campaign letters sent by GTI to its employees as well as statements made at a management-employee dinner at the Starboard Tack Restaurant.[27] An employer may state his opposition to a union. *NLRB* v. *Threads, Inc.*, 308 F.2d 1 (4th Cir. 1962); *See N.L.R.B.* v. *Gissel Packing Co.*, 395 U.S. 575, 616–20 (1969). It is also permissible for an employer to state that employees would be no better off with a union. *See Indiana Rayon Corporation* v. *NLRB*, 355 F.2d 535 (7th Cir. 1966). Furthermore, the employer may indicate that he will "deal hard" with the union, predict dire consequences if the union wins and, contrary to the ACLU's position, state that benefits are subject

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[26] These sections provide in pertinent part:

(a) it shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7 of this title;

(3) by discrimination in regard to hire or tenure of employment or any form or condition of employment to encourage or discourage membership in any labor organization;

(5) to refuse to bargain collectively with the representative of his employees, subject to the provisions of Section 9(a). [29 U.S.C. 158(a)(1), (3) and (5).]

The Section 7 rights referred to in Section 8(a)(1) are as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3). [29 U.S.C. 157.]

[27] An employer's speech rights are provided for in Section 8(c) of the Act as follows:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit. [29 U.S.C. 158(c).]

to bargaining "from scratch." *NLRB* v. *Herman Wilson Lumber Co.*, 355 F.2d 426 (8th Cir. 1966); *The Bendix Corp.* v. *NLRB*, 400 F.2d 141 (6th Cir. 1968). Based on these and other cases the ALJ prudently concluded that the statements made at the Starboard Tack Restaurant and the four campaign letters are protected speech under Section 8(c) of the NLRA and do not constitute an unfair labor practice.[28]

65. The ACLU further charges that GTI actively engaged in prohibited interrogations of its employees. Specifically, two supervisory and four nonsupervisory GTI employees were questioned regarding the union. Supervisory employees are excluded from the definition of employees protected by the Act under Section 9(b). Thus, the ACLU's claims with respect to the supervisory employees are inapposite. Whether questioning is unlawfully threatening or coercive depends on the overall circumstances, including such factors as whether there is a pattern or history of employer hostility, the nature of the information sought, and the place and method of interrogation. *NLRB* v. *Lorben Corporation*, 345 F.2d 346 (2nd Cir. 1965); *Bourne* v. *NLRB*, 332 F.2d 47 (2nd Cir. 1964). A review of the record shows that the "interrogations" between management and employees were non-coercive in nature. They did not occur against a backdrop of management-employee hostility, and several were quite informal, held outside of work or at a company recreation facility, in settings which appear to be inherently non-threatening. The ACLU's charge fails.[29]

66. Additionally, the ACLU asserts that GTI engaged in a series of anti-union actions following the election. In general, where an employer's conduct is reasonably intended to achieve legitimate and substantial business ends, any slight harm to employee rights will be outweighed. *See Textile Workers Union* v. *Darlington Manufacturing Co.*, 380 U.S. 263 (1965). On the record before us, we cannot find an overall discriminatory motive against news department employees in the GTI actions at issue, most of which merely effectuated pre-election policy. With respect to the changing of station locks and the restricted distribution of new keys, GTI was able to proffer evidence of recent thefts. For each action

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[28] Insofar as the ACLU asserts generally that GTI employees believed their collective bargaining rights were infringed by certain statements of GTI management, we also concur with the ALJ that emphasis placed on the employee's state of mind is inappropriate since precedent makes it clear that an objective standard must be applied to the employer's remarks—*i.e.*, whether they may resonably be said to interfere with employee rights. *N.L.R.B.* v. *Illinois Tool Works*, 153 F.2d 811 (7th Cir. 1946); *Fidelity Telephone Co.*, 236 NLRB 166 (1978).

[29] The ACLU has also failed to specifically support or substantiate on the basis of record evidence its generalized claims that GTI in its questioning of or communications with its employees unlawfully promised benefits or created an impression of surveillance of union activities. For example, although the ACLU alleges that Gross asked two supervisors to become informers on union activities, there is no evidence that either actually did so and one expressly testified that he was not even asked. Tr. 17416–17.

GTI asserted a business justification which, in our view, may be reasonably held to outweigh any subsequent disadvantage complained of by its employees.

67. The ACLU further urges that GTI failed to bargain in good faith in violation of Section 8(a)(5). This question is judged by the circumstances surrounding the contract bargaining and the behavior of the parties. *See NLRB* v. *Pacific Grinding Wheel Co., Inc.*, 572 F.2d 1343 (9th Cir. 1978). As the ALJ aptly found, the record shows that the GTI negotiator (Boonstra) discussed, clarified, compromised, limited, and agreed, both tentatively and formally, to the union's proposals. Although the pace at times was slow and not always continuous, bargaining did occur and eventually resulted in a contract. We believe there is ample evidence in the record to support GTI's good faith bargaining efforts.

68. The last allegation by the ACLU is that GTI employees Grossfeld and Hart were dismissed because of their actions on behalf of the union, in violation of Section 8(a)(3). It has generally been held that in order to prove such a violation it must be shown beyond suspicion or surmise that the employee was disciplined as a direct result of the employee's union activities. *Northern Petrochemical Company* v. *NLRB*, 469 F.2d 352 (8th Cir. 1972); *Dubin-Haskall Lining Corp.* v. *NLRB*, 375 F.2d 568 (4th Cir. 1967). Using a reasonable man test, the ALJ concluded that Grossfeld had in fact been fired based on his union-related activities, and that the discharge of Hart, who with Grossfeld was a primary union organizer, had followed suit. In other words, the ALJ held that it was simply unreasonable for management to have reacted to the incidents in question in the manner described unless it was motivated by an anti-union animus. We believe the ALJ's conclusion is fairly drawn from the facts of record and reflects a careful evaluation of the competing claims as well as a reasonable analysis of the circumstances of the GTI-Grossfeld relationship. Accordingly, we will affirm his conclusion.

69. Despite our conlcusion that GTI did in fact violate Section 8(a)(3) of the NLRA, we concur with the ALJ that this should not be a factor in determining whether license renewal is appropriate. The controlling policy was set forth by the Commission more than 30 years ago in *Uniform Policy on Violations of Laws*, 42 FCC 2d 399 (1951), and was recently applied in *RKO General, Inc.*, 78 FCC 2d 1, 47 RR 2d 921 (1980), *aff'd in part*, 670 F.2d 215 (D.C. Cir. 1981). Past misconduct is to be reveiwed to the extent that a "predictive judgement" can be made about future broadcast performance. Relevant considerations include: (1) the nature of the misconduct, and whether it was broadcast related, (2) the frequency of the misconduct, (3) the recentness of the misconduct, and (4) whether the acts were willful or inadvertent. While the action here was deliberate and indirectly related to broadcasting, it was an isolated event which is remote in time. Furthermore, following the firings and the filing

of an unfair labor practice charge with the NLRB, but prior to the holding of an NLRB hearing, the parties reached a settlement whereby Hart and Grossfeld were offered reinstatement as well as compensation for lost wages. In a recent decision, *Central Texas Broadcasting Co., Ltd.*, 90 FCC 2d 583, 51 RR 2d 1978 (Rev. Bd. 1982), we declined to assess a comparative demerit against an applicant found by the ALJ to have violated the Federal Age Discrimination in Employment Act, where, as here, although the activity took place in the broadcast field, it was isolated and remote in time, and the parties had settled their dispute without an adjudication on the merits. And in an earlier case, *CBS, Inc.*, 52 FCC 2d 423,33 RR 2d 579 (Rev. Bd. 1975), the Board refused to add a labor issue even though the applicant had been found guilty of violating Federal law by the NLRB because, *inter alia*, the conduct did not represent a pattern of recurring violations or otherwise have any relationship to the applicant's ability to operate a broadcast station in the public interest. The same is true of GTI's conduct in this case, and we believe its overall qualifications to operate its facilities are not impaired by this single episode.

70. *Public File Issue.* A Section 73.3526 issue was added to this proceeding on the basis of allegations that GTI denied a member of the public access to its 1970 license renewal file. Section 73.3526, 47 CFR 73.3526, requires licensees to maintain a file for public inspection containing, *inter alia*, copies of license renewal applications, amendments, and composite week logs. The ALJ found that the evidence revealed only technical violations of the rule by GTI which did not reflect adversely on the licensee's qualifications. The ACLU excepts to this conclusion and argues that, although the Commission has not imposed serious sanctions for public file violations in recent years and while the evidence in this record may not warrant disqualification, the violations are decisionally significant and must be weighed along with GTI's other derelictions. We conclude that the ALJ's evaluation is correct and should be affirmed.

71. The specific episode giving rise to this issue occurred in 1971, when Denise Miller sought access to GTI's license renewal application in order to examine the licensee's promise versus performance record and made numerous unsuccessful attempts within a one-week period to obtain the files from H. F. Gross' secretary. Tr. 16404, 16410. Although the secretary, Clara Burrell, denied that Miller had been refused access to the file (Tr. 18935), Tom Jones confirmed that Miller had complained to him about Burrell. Tr. 18994–5. Thus, we are inclined to accept the ALJ's finding that Miller was denied the file for a period of time. This incident, however, did not prejudice Miller. GTI had in fact previously granted Miller wide-ranging access to WJIM-TV's news operations in connection with her work on a Master's thesis (Tr. 16420–28), and she subsequently successfully completed her thesis and requirements for her degree. Tr.

16442. Furthermore, as the ALJ found, there was no motive for GTI to intentionally deny the renewal application to Miller since its 1970 performance exceeded its promises made in 1967. GTI Exh. 00, p. 1. In view of these circumstances, we do not believe this incident takes on decisional importance. *See Millard V. Oakley,* 45 RR 2d 661 (1979); *Felix H. Morales*, 58 FCC 2d 642 (1976).

72. Other evidence under this issue related to complaints by representatives of Citizens United for Better Broadcasting (CUBB) and the Lansing Committee for Children's Television (LCCT) that they were harassed when they sought to view the file. Specifically, there were instances where these representatives had to wait from 15 to 40 minutes to see the file, where GTI officials were present in the room during the inspections, and where the individuals were requested to sign forms and provide their names and addresses. We do not believe these incidents amount to improper intimidation or interference with the right of access to the public file. Thus, the brief waiting times complained of did not interfere with ultimate access and were not shown to be attributable to an improper motive. *Cf. KSD/KSD-TV, Inc.*, 61 FCC 2d 504 (1976). GTI supported the presence of officials in the room with its concern for the security of the files, and, in the absence of evidence of contrary motivation, we cannot say this was an unreasonable precaution. *See Miami Valley Broadcasting Corp.*, 48 FCC 2d 177, 192 (1974). Furthermore, licensees are permitted to request the names and addresses of persons seeking the public file, *Licensee's Local Public File*, 32 FCC 2d 729 (1971), and the form complained of required no additional information. Although GTI subsequently expanded the form to request identification of the organization represented, a procedure not specifically approved of by the Commission (*id.*), GTI also expanded the hours available for viewing the public file and made additional copies of composite week logs available. In short, we can find no apparent pattern of harassment or improper interference on the basis of this evidence.

73. There was also an incident in July 1973 when John Able, a member of LCCT and CUBB, was unable to obtain the composite week logs. He was informed that the logs were in Washington with counsel or on file with the FCC. In fact, the GTI renewal application contained a notation that a copy of the logs was also filed. Tr. 16472–73, 16489; GTI Exh. TT, p. 5. By August, the logs were once again available. GTI Exhs. CC, KK. We do not believe this single instance of failure to provide all the information requested is serious enough to be decisionally significant, particularly where the material was subsequently made available and no specific harm to any person was established. *See CBS, Inc.*, 57 FCC 2d 505, 522–3 (1976) *aff'd after remand*, 82 FCC 2d 227 (1980). Lastly, there were three visits in 1975 from LCCT and CUBB representatives seeking to inspect copies of letters from and agreements with those organizations. Only one

of the visits was successful, apparently because the contents of the public file by then had expanded to two file drawers and the searchers were sometimes directed to only one drawer. Tr. 16585–86. GTI has since established procedures to insure that all public correspondence is placed in the file (Tr. 23352–54, 23182), and to see that all agreements and amendments are physically attached to the application. Tr. 21183, 23346–49. In view of these corrective measures designed to assure a complete and readily available public file, we cannot conclude that a decisionally significant violation of Section 73.3526 has been established. *See Storer Broadcasting Co.*, 58 FCC 2d 468 (1976).

74. In sum, the incidents of record under this issue, while disclosing some problems in maintenance of the public file, hardly establish a pattern of serious or extended violations or of culpable intent to deny access to the public file on GTI's part. Furthermore, steps have been taken by the licensee to eliminate recurrence in the future of even the limited problems that did arise. We conclude, therefore, that the ALJ properly characterized the lapses here as technical violations and that no adverse impact on GTI's qualifications is warranted.

Ultimate Conclusions

75. All exceptions having decisional significance have been considered by the Board. In arriving at our ultimate conclusions and determining whether GTI is qualified to remain a Commission licensee and, if so, whether its AM, FM, and TV licenses should receive full-term renewals or something less, it is necessary for us to consider all relevant circumstances surrounding GTI's performance as a licensee, including remedial efforts.[30] Corrective measures taken while a licensee is under investigation are "suspect"; however, they may demonstrate a promise of full compliance in the future.[31] And it is well settled that the Commission has wide discretion in determining the appropriate remedy to be applied for licensee misconduct.[32]

76. To be sure, the case at bar does not present GTI during the 1970–73 renewal period in a totally admirable light in terms of compliance with Commission rules and policies. But the preceding analysis of the numerous issues designated against GTI demonstrates that the gravity of GTI's derelictions has been generally overstated. In particular, we strongly disagree with what we believe to be the ALJ's most crucial conclusion—that "the clear intent of GTI to engage in misrepresentation and outright

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[30] *E.g., Deer Lodge Broadcasting, Inc.*, 86 FCC 2d 1066, 49 RR 2d 1317 (1981).

[31] *WJPD, Inc.*, 79 FCC 2d 115, 127, 47 RR 2d 1423, 1431 (1980).

[32] *Walton Broadcasting, Inc.* 78 FCC 2d 857, 868 n. 17, 47 RR 2d 1233, 1241 n. 17, *recon, denied*, 83 FCC 2d 440, 48 RR 2d 1006 (1980), *aff'd without opinion*, D.C. Cir. Case No. 81-1027, decided May 28, 1982.

fraud" with the Commission, the broadcast industry, and the public made GTI's violations "absolutely disqualifying" and showed that GTI is "beyond rehabilitation." I.D., Conclusions, para. 135. Indeed, nowhere do we conclude that GTI committed any misrepresentations or outright frauds; at most the evidence and case law demonstrate the following derelictions that support a grant of less than full-term renewal of GTI's licenses:

(1) a history of network clipping at Station WJIM-TV, with meaningful management steps to terminate this conduct before and after Commission intervention (paragraph 23, *supra*);

(2) a single, isolated, and unintentional instance of lack of candor in an H. F. Gross written response to a March 1971 Commission clipping inquiry (paragraph 36, *supra*);

(3) the issuance of two H. F. Gross memoranda in 1972 and 1973 that probably had an improper inhibitory effect on WJIM-TV's sports coverage of the Lansing Tennis Club (paragraph 41, *supra*); and

(4) a history of serious exaggeration of Station WJIM(AM)'s signal contours on its promotional materials with "active indifference" by the Grosses toward ensuring the accuracy of these materials (paragraph 63, *supra*).

77. From this summary, it is clear that, with the exception of the clipping and contour map matters, all of GTI's proven and non-technical violations of Commission rules or policies in this proceeding were infrequent or single incidents followed by remedial action. And while the clipping and contour map matters were not isolated incidents, they were also eventually resolved through pre-FCC intervention and post-intervention remedial action. Furthermore, all transgressions except for the contour map issue pertained only to Station WJIM-TV, and, as to the contour maps, the evidence did not establish that either H. F. or James Gross was actually involved in preparing or approving the misleading depictions. What also emerges from our overall review is the obviously central role that H. F. Gross played in most of the conduct investigated in this proceeding and the fact that the elderly Mr. Gross retired from the scene in April 1977 (paragraph 4, *supra*). Since that time James Gross has assumed ultimate responsibility for all of GTI's operations. *Id*. Finally, we take note of GTI's 48 years as a Commission licensee and the fact that all of its licenses had been regularly renewed every three years up until the present proceeding (paragraph 3, *supra*).

78. The Board has already expressed its judgment that WJIM(AM)'s use of misleading contour maps should be strongly censured but should not lead to GTI's disqualification. See paragraph 62, *supra*. And we have reached the same conclusion as to the WJIM-TV-related clipping, clipping misrepresentation, and news practice issues. See paragraphs 23, 36, and 41, *supra*. Disqualification has properly been called the "maximum

weapon" in our licensing arsenal,[33] and we must be cautious in its use. We conclude that when the relative levels of misconduct and accompanying mitigating circumstances and remedial efforts in this case are measured against the nonrenewal cases that have been cited to us,[34] the situations in which license renewal has been denied are much more egregious, usually accompanied by a "pattern" of deliberate attempts to deceive the Commission. *See Lorain Journal Co.* v. *FCC*, *supra; cf. Sea Island Broadcasting Corp.* v. *FCC*, 627 F.2d 240 (D.C. Cir.), *cert. denied*, 449 U.S. 834 (1980).

79. We here focus on the emerging nonrenewal standard of "egregious" conduct because that is precisely how the presiding ALJ characterized Station KORK-TV's clippings and clipping misrepresentation activities in *Western Communications, Inc.*, 59 FCC 2d 1463, 1502 (Initial Decision, 1974), a proceeding that is extensively advocated by the ACLU and the Bureau as being dispositive of the appropriateness of nonrenewal here.[35] See ACLU Reply Br., pp. 23–25, and Bureau Reply Br., pp. 9–11. We believe that the KORK-TV proceeding and (and other egregious conduct cases) are clearly distinguishable. In paragraph 35, *supra*, we preliminarily noted that while Station KORK-TV was found to have been involved in a series of four clipping-related misrepresentation episodes *vis-a-vis* the Commission, GTI made no clipping misrepresentations at all to the Commission. Rather, it was involved in a single, unintentional lack of candor. While even a slight lack of candor is not to be condoned, it cannot be equated with misrepresentation, a generally more serious charge. *Fox River Broadcasting, Inc.*, *supra*. And misrepresentation's essential elements of falsity, materiality, and intent to deceive were all found in the KORK-TV proceeding, unlike here. As to the clipping violations in the two cases, the essential difference that we note—which we deem significant—is that although GTI took several important steps to end the practice once it was specifically aware that it was contrary to the Commission's fraudulent billing rule, and after a single Commission inquiry, KORK-TV waited until it had received three Commission inquiries (and had falsely answered the first two) before initiating any remedial measures. While we are critical of the two-year period that elapsed before GTI's clipping effectively ceased (see paragraph 23, *supra*), the fact that

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[33] *WADECO, Inc.* v. *FCC*, 628 F.2d 122; 129 (D.C. Cir. 1980) (dissenting opinion of Mikva, J.).

[34] *E.g., Berlin Communications, Inc.* v. FCC, 626 F.2d 869 (D.C. Cir. 1979); *White Mountain Broadcasting Co.* v. *FCC*, 598 F.2d 274 (D.C. Cir.), *cert. denied*, 444 U.S. 963 (1979); and *Robinson* v. *FCC*, 334 F.2d 534 (D.C. Cir.), *cert. denied*, 379 U.S. 843 (1964).

[35] Also see *RKO General, Inc.* v. *FCC*, *supra* (nonrenewal affirmed where applicant's conduct was "so egregious and so conspicuous"), *Deer Lodge Broadcasting, Inc.*, *supra* ("considerably more egregious" technical violations over a period of years would be required to justify nonrenewal), and *George E. Cameron, Jr. Communications*, *supra* ("egregious" or "stark" lack of candor is sufficient basis for nonrenewal).

that it initiated significant remedial actions "on its own" is worthy of note as a mitigating circumstance.

80. Hence, the Board believes that *Hubbard Broadcasting, Inc. supra*, and other short-term renewal cases, such as *Deer Lodge Broadcasting, Inc., supra*, provide a more fitting remedy for GTI's limited misconduct. These cases emphasize an optimism that we believe is justified here—contrary to the ALJ's view that GTI is "beyond rehabilitation"—that where wrongdoing is not egregious and is accompanied by evidence of remedial action and new leadership, an established licensee can succeed in demonstrating during the "probationary" period of a short-term renewal that it has fully mended its ways and is worthy of the Commission's and the public's continued confidence. In this connection, the *Hubbard* case is particularly apposite. There, a two-year short-term renewal was granted, based on the licensee's clipping of noncommercial material from September 1972 to April 1973 with accompanying gradual remedial action during the period—a fact situation almost identical to GTI's.

81. Since all of the proven misconduct in this proceeding, other than the contour map matter, pertained to WJIM-TV's operations, it is appropriate that the two-year short-term renewal sanction that we are ordering should apply to that station so its continued progress and good conduct may be specially monitored. On the other hand, we do not deem the contour map matter to have been as much an AM issue as a question of inadequate corporate supervision by GTI's top managerial echelon. Because managerial oversight also fits within the scope of our WJIM-TV monitoring, we believe that our concerns (and expectations) in this area can be adequately protected through WJIM-TV's short-term renewal.[36] Hence, we conclude that grant of full-term renewals of the licenses of Stations WJIM and WJIM-FM (where no misconduct at all occurred) would serve the public interest, convenience, and necessity. With H. F. Gross' retirement and James Gross' assumption of ultimate responsibility at GTI in April 1977, a new managerial era began. It is now up to GTI's new leadership to demonstrate that the old order has indeed changed, "yielding place to new."[37]

82. ACCORDINGLY, IT IS ORDERED, That the Broadcast Bureau's June 14, 1982 motion to strike material from Gross Telecasting, Inc.'s exceptions, and Gross Telecasting, Inc.'s June 28, 1982 motion to strike the June 22, 1982 letter of the American Civil Liberties Union of Michigan, Lansing Branch, ARE DENIED as being of no decisional significance; and

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[36] The two-year short-term renewal of WJIM-TV's license is an even stronger sanction than in the *Hubbard* case, *supra*, because under the 1981 amendments to the Communications Act of 1934, a regular renewal for WJIM-TV would be for five years, rather than the three years that were permitted when the *Hubbard* case was pending.

[37] See Tennyson, *Idylls of the King*, "The Passing of Arthur," line 408.

83. IT IS FURTHER ORDERED, That the motions to correct transcript of oral argument filed July 29, 1982, by the American Civil Liberties Union of Michigan, Lansing Branch, Gross Telecasting, Inc., and the Broadcast Bureau, respectively, ARE GRANTED; and

84. IT IS FURTHER ORDERED, That the application of Gross Telecasting, Inc. for renewal of its licenses for Stations WJIM (File No. BR-830) and WJIM-FM (File Nos. BRH-1052 and BRSCA-207) at Lansing, Michigan, ARE GRANTED; and

85. IT IS FURTHER ORDERED, That the application of Gross Telecasting, Inc. for renewal of its license for Station WJIM-TV (File No. BRCT-68) at Lansing, Michigan, IS GRANTED, said renewal, however, to expire on October 1, 1984.

FEDERAL COMMUNICATIONS COMMISSION
Jerold L. Jacobs
Member, Review Board

FCC 81D-57

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

in re Applications of	
GROSS TELECASTING, INC.	DOCKET NO. 20014
For Renewal of Licenses of Stations WJIM, WJIM-FM, WJIM-TV Lansing, Michigan	File Nos. BR-830 BRH-1052 BRSCA-207 BRCT-68

Initial Decision in Docket No. 20014

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FCC 81D-57

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Applications of	
GROSS TELECASTING, INC.	DOCKET NO. 20014
For Renewal of Licenses of Stations WJIM, WJIM-FM, WJIM-TV Lansing, Michigan	File Nos. BR–830 BRH–1052 BRSCA–207 BRCT–68

Appearances

Harry M. Plotkin, Gene A. Bechtel, Linda A. Cinciotta, Harry F. Cole, Christopher B. Fager (Arent, Fox, Kintner, Plotkin & Kahn); *Leo A. Farhat, E. Michael Stafford* (Farhat, Burns and Story); *Earl R. Boonstra, John A. Entenman* (Dykeman, Gossett, Spencer, Goodnow & Trigg) on behalf of Gross Telecasting, Inc.; *Charles W. Kelly, John Sturm, Joseph Chachkin, Keith Fagan, Michael Fitch, Robert W. Ware* and *W. Kennedy Keane* on behalf of Chief, Broadcast Bureau, Federal Communications Commission; and *Harvey J. Shulman* and *Collot Guerard* on behalf of the American Civil Liberties Union, Lansing Branch.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE BYRON E. HARRISON

ISSUED: NOVEMBER 5, 1981; RELEASED: NOVEMBER 19, 1981

Preliminary Statement

1. This proceeding involves the applications of Gross Telecasting, Inc. (GTI) to renew the licenses for Stations WJIM-TV, WJIM-FM and WJIM(AM) at Lansing, Michigan. These three applications were designated for hearing by the Commission's *Memorandum Opinion and Order*, 46 FCC 2d 543 (1974). The Commission made the American Civil Liberties Union of Michigan, Lansing Branch (ACLU) a party to these proceedings. The issues designated for hearing in the original Designation Order are as follows:

> (a) To determine whether the licensee of WJIM-AM, FM and TV, or any of its employees, agents or principals, ordered the coverage and/or non-coverage of certain persons and/or events and thereby attempted to slant, distort or suppress news.
>
> (b) In light of the evidence adduced pursuant to issue (a), above, to determine whether such orders, if any, resulted in the slanting, distortion or suppression of news.
>
> (c) To determine whether the licensee of WJIM-AM, FM and TV, or any of its employees, agents or principals, ordered the coverage and/or non-coverage of certain persons and/or events in a manner designed to serve the licensee's or its principals' private, rather than the public, interest.
>
> (d) In light of the evidence adduced pursuant to issue (c), above, to determine whether such orders, if any, resulted in the selection of programming for the purpose of serving the licensee's or its principals' private, rather than the public, interest.
>
> (e) To determine all the facts and circumstances surrounding the (i) obtaining of, (ii) submission to the Commission of, and (iii) withdrawal of reliance upon, a letter dated February 26, 1974, signed by Richard Ferman of the Lansing Tennis Club.
>
> (f) In light of the evidence adduced pursuant to issue (e), above, to determine whether the applicant has made misrepresentations to, or has been lacking in candor with, the Commission.
>
> (g) To determine the number of public service announcements broadcast by Station WJIM-TV during the 1973 composite week and, in light of the evidence adduced, to determine whether the licensee has attempted deliberately to misrepresent the extent of these announcements.[1]
>
> (h) To determine, in light of the evidence adduced under the preceding issues, whether the applicant possesses the requisite qualifications to be or to remain a licensee of the Commission and whether a grant of the applications would serve the public interest, convenience and necessity.

The Designation Order placed the burden of proceeding on issues (a)–(g) on ACLU and the Broadcast Bureau (Bureau) and the burden of proof on all issues (a–h) was placed on GTI. The Bureau was also required by the Designation Order to serve upon GTI a Bill of Particulars. This document was served upon GTI on April 23, 1974.

2. Thereafter, a series of Orders were released with respect to this proceeding that substantially enlarged the scope of the evidentiary hearing originally proposed. By *Memorandum Opinion and Order* of the Review Board released October 7, 1974 (48 FCC 2d 1186), the issues were enlarged as follows:

> To determine whether Gross Telecasting, Inc., failed to comply with the provisions of Section 1.526 of the Commission's Rules, and, if so, to determine the effect thereof on the qualifications to be a Commission licensee.

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[1] Issue (g) in this proceeding was resolved by a Summary Decision in favor of GTI prior to the commencement of hearing (see *Memorandum Opinion and Order* FCC 75M–941), released May 23, 1975.

> To determine whether Gross Telecasting, Inc. engaged in the "clipping" of television network programs and, if so, to determine the effect thereof on its qualifications to be a Commission licensee.

The burden of proceeding on these issues was placed on the ACLU and the burden of proof on GTI.

3. By *Memorandum Opinion and Order*, released October 8, 1974 (49 FCC 2d 56) the Review Board added the following issue:

> To determine whether Gross Telecasting, Inc. has violated the provisions of Section 73.1208 of the Commission's Rules, and, if so, to determine the effect thereof on its qualifications to be a Commission licensee.

The burden of proceeding with the introduction of evidence was placed on the ACLU and the burden of proof was placed on GTI.

4. By *Memorandum Opinion and Order* released September 5, 1975, (55 FCC 2d 76) the Review Board added the following issues:

> To determine whether in connection with a letter submitted to the Commission on March 25, 1971, Harold F. Gross and/or Gross Telecasting, Inc. made misrepresentations, lacked candor or failed to ascertain the true facts with respect to the "covering" of network programming by local material on station WJIM-TV; and
>
> To determine in light of the evidence adduced pursuant to the [above issue], whether Harold F. Gross and/or Gross Telecasting, Inc. possess[es] the requisite character qualifications to be or to remain a licensee of this Commission.

The burden of proceeding with the introduction of these issues was placed on the Bureau, and the burden of proof on GTI.

5. By *Memorandum Opinion and Order* released September 16, 1975 (55 FCC 2d 295) the Commission added an issue as follows:

> To determine whether Gross Telecasting, Inc., engaged in labor practices inconsistent with the national labor policy expressed in the National Labor Relations Act and, if so, the effect of such conduct on the character qualifications of the licensee and its ability to operate its broadcast stations in the public interest.

Although the burden of proceeding was initially placed on ACLU, the Commission later ordered that the Bureau share this burden with ACLU (57 FCC 2d 1213 (1976)). The burden of proof was placed on GTI.

6. Finally, by *Memorandum Opinion and Order* released August 22, 1977 (41 RR 2d 634), the Presiding Judge added this issue:

> To determine whether Gross Telecasting, Inc., has misrepresented the 0.5 mV/m contour of Station WJIM(AM) on its rate cards or promotional literature distributed to the public or potential advertisers.

These proceedings can be described as unique, massive and complex. Over 700 formal documents have been filed with or issued by the Commission, the Review Board and the Presiding Judge. A total of 917 exhibits have been marked for identification. Since the first prehearing conference which was held on June 10, 1974, some 164 hearing sessions have been held in both Washington, D.C. and Lansing, Michigan. A total of 129 witnesses testified and this testimony and related arguments in support of the positions of the parties involved 24,355 pages of transcript. The last evidentiary hearing session was held on December 16, 1977 and the record was closed with the filing of Reply Proposed Findings of Fact and Conclusions of Law on October 10, 1978.

7. All parties (GTI, Bureau and ACLU) fully participated in all phases of this proceeding, except the ACLU did not take part in the evidence introduced on the last issue added by the Presiding Judge, i.e., alleged misrepresentation of coverage in promotional literature. In addition to the counsel of record, a number of law students and law clerks were involved and their names will be listed in an appendix* to this Initial Decision.

8. Extensive use of discovery, as permitted under the Commissions Rules, was utilized. While only a small portion of this discovery became a part of the evidentiary hearing record, all parties were able to proceed on the basis of facts such as they could be reconstructed.

Due Process and the First Amendment

9. GTI has throughout these proceedings urged that its rights under the Due Process and the First Amendment have not been protected. GTI had asked that procedural rules be adopted as the rule of this case which would (a) prohibit any party from inquiry into matters before a date certain, which GTI said would be the period covered by the last complete license period; and (b) prohibit any party from attempting to introduce evidence which is not covered by the Commission's Designation Order or the Bill of Particulars served on GTI by the Bureau. The proofs were not limited as requested by GTI and in this connection see *Gross Telecasting, Inc.*, 47 FCC 2d 349 (1974); *Memorandum Opinion and Order* released May 23, 1975 (FCC 75M–941); *Order* released July 10, 1975 (FCC 75M–1219); *Memorandum Opinion and Order*, released January 22, 1975 (FCC 75M–146); and *Order* released October 21, 1975 (FCC 75–1147). By means of all of the above Memorandum Opinion and Orders and Orders, GTI urges that it was required to proceed to hearing without these important questions being resolved. These matters are cited here only to memorialize GTI's position and no further action on these matters is taken by the Presiding Judge.

Findings of Fact

Gross Telecasting, Inc.

10. GTI is the licensee of Stations WJIM, WJIM(FM) and WJIM-TV at Lansing, Michigan (GTI Exhibit 152). GTI's AM license was first granted

on November 30, 1934 and it subsequently was licensed for the FM and TV facilities. These licenses have been routinely and regularly renewed over the past 40 years (GTI Exhibit 256).

11. For the past 23 years,[2] GTI has been a publicly-owned company and is currently listed on the American Stock Exchange. It has in excess of 1,500 stockholders. There are two classes of capital stock each having equal voting rights. Common Stock (399,851 shares issued and outstanding) and Class B Common Stock (400,000 shares issued and outstanding). Harold F. Gross owns 130,400 shares (16.3% of the issued and outstanding stock) and his wife, children and grandchildren own an aggregate total of 285,080 shares (35.6%). Of this aggregate total, James H. Gross, who is involved in many of the matters covered in this proceeding, owns individually 49,032 shares (GTI Exhibit 152). As of June 1, 1975, other 1% or greater stockholders are Merrill Lynch, Pierce, Fenner and Smith—13,677 shares (1.7%); Bache & Co.,—11,799 shares (1.5%); E.F. Hutton—9,940 shares (1.2%); and Dean Witter & Co.—9,850 shares (1.2%). GTI and its subsidiaries also own and operate Stations WKBT-TV at La Crosse, Wisconsin and a CATV system in Lansing Township, Michigan (GTI Exhibit 152). The total number of stockholders is more than 1,700 persons residing in 42 states and several foreign countries. About 350–400 of these stockholders reside in the WJIM service area (Tr. 15156–57).

12. The officers of GTI are Harold F. Gross—Chairman of the Board; James H. Gross—President and Treasurer; Paul R. Trigg, Jr.—Vice President; Philip E. Sherck—Vice President-Secretary; Peter S. Good—Vice President; and Erma L. Nolan—Assistant Secretary. The Board of Directors consists of Harold F. Gross, James H. Gross, Paul R. Trigg, Jr., Seth R. Bidwell[3] and Dr. Edgar Hardin (GTI Exhibit 152, Tr. 21649 and Letter of Counsel dated March 21, 1978).

13. Mr. Harold F. Gross served as President of the corporation from prior to 1955 until March, 1971. He has also been a member of the Board of Directors since prior to 1955 and has held the position of Chairman since March, 1971 (GTI Exhibit 152). Mr. H. F. Gross resigned from the position of Chief Executive Officer in April, 1977 (Tr. 21679).

14. Mr. James H. Gross became a member of the Board of Directors in March, 1965, at which time he became the Secretary of GTI. He held that office until March, 1971. He became a Vice President in March, 1969 and held that position until March, 1971, at which time he became President

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[2] The transcript (Tr.15156) shows GTI became a public corporation in 1965. All parties agree that the date should read 1955 and the Presiding Judge accepts this correction.

[3] Trigg is a partner in a Detroit, Michigan law firm. Good is general manager of Station WKBT-TV, La Crosse, Wisconsin. Noland is a former Executive Secretary employed by GTI who is presently employed on a part-time basis. Bidwell resides in Scottsdale, Arizona and formerly practiced law in Grand Rapids, Michigan (GTI Exhibit 153). Dr. Hardin is President of Michigan State University (Tr. 23869).

and Treasurer. In April, 1977, he replaced Mr. Harold F. Gross as the Chief Executive Officer (GTI Exhibit 152, Tr. 24679).

15. As President and as Chairman of the Board, Mr. Harold F. Gross has actively participated in the day-to-day operations of WJIM-AM-FM-TV. He has been involved as General Manager in charge of broadcast operations including the news and sales departments (Tr. 1550). In that capacity, he formulated the general policies to be followed in the operation of the news department (Tr. 1551). Prior to his appointment, approximately in January, 1971, Mr. James Gross was not involved in the news operation (Tr. 15430). Before that time Mr. James Gross was involved primarily in sales, continuity, promotion and other business aspects of GTI's operation (Tr. 15467, 15514). Since Mr. James Gross became the President and Chief Operating Officer, he has gradually assumed more responsibility for the operation of WJIM-AM-FM-TV. But this change in ultimate authority is still going on, and, as will be seen, most of the important changes in policy up to the present time are not made by Mr. James Gross without consulting with Mr. Harold F. Gross (Tr. 5405, 5407, 15869–70).

16. WJIM-FM broadcasts on a 24-hour basis (Tr. 15158). It carries the news programming of the NBC Radio Network. Mr. James Gross was not involved in the news department prior to 1971 (Tr. 1550–51, 14959–60, 1556, 2109–10, 15467, 15514,15869–70, 5405 and 5407). A number of alleged incidents of news blackout or suppression of news were covered in the lengthy record of this proceeding. These findings will deal with this subject on an incident by incident basis.

Alleged Blackout of Lansing City Councilmen During Period GTI was Seeking a CATV Franchise[4]

17. Before commencing with the facts of record on GTI actions in seeking a CATV franchise for the City of Lansing, it is desirable to set out in brief form the nature of the facts and arguments advanced by the parties. These events will cover a period commencing in April, 1965 and conclude in 1973. Central to this controversy is the claim that GTI, or its responsible officials, would provide or withhold news coverage to city council members depending on their respective positions on GTI CATV franchise applications. A number of city council members will be involved plus a number of employees of GTI. Thus, a key issue herein is to determine if GTI covered news items based on news judgment or, if the news judgment is controlled in some way by the private interests of GTI—

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[4] CATV is a shorthand term used for community antenna television and denotes the placing of cable on poles along a city right-of-way which are capable of delivering local and distant TV signals over the cable to subscribers. The TV signals are either received off-the-air or by use of microwave. Some CATV systems also carry background music, movies and locally-originated programming and special events not available on a direct off-the-air basis.

a CATV franchise in this case. No attempt will be made in these findings to second guess the value of any news item providing the decision is based on a news judgment untainted by any private interest considerations.

18. In April, 1965, GTI filled out an application for a CATV franchise for the City of Lansing, Michigan. During the periods at issue here, it was the City Council that had jurisdiction over such franchises (ACLU Exhibit 234, GTI Exhibit 225). Next, in December, 1965, Mayor Max Muringham appointed a special CATV committee whose members were Councilmen Harold A. Moore (Chairman), Dean, Smith and Perrin (ACLU Exhibit 234, GTI Exhibit 234, GTI Exhibit 225 and Tr. 12859–60). On April 1, 1966, the special CATV committee had made arrangements to hold hearings, on an individual basis, for the 11 applicants for this franchise. In July, 1966, the City Council unanimously adopted a resolution which directed that the CATV franchise be awarded to GTI, subject to terms to be agreed upon between GTI and the City Attorney, and subject to final approval by the City Council (ACLU Exhibit 234, GTI Exhibit 225). In effect, this was only a paper franchise with all terms and conditions to be worked out and brought back to the City Council for its approval before any actual construction could commence.

19. Another of the 11 original applicants for the Lansing franchise must also be considered at this point in time. Engineering Services Company (Engineering) was also active in seeking CATV franchises for both Lansing and East Lansing. Actually, Engineering was a sole proprietorship which was operated by Mr. Karl A. Kandell. Engineering or Kandell was wholly funded by Mr. Harry Henderson of Alexandria, Louisiana. Engineering's sole client and employer was Mr. Henderson (Tr. 13705–9, 13856–57, and 13864). The purpose of Engineering (Kandell) was to secure CATV franchises which were then turned over to Henderson who formed corporations to develop the franchise secured by Kandell (Tr. 13862–64). For this service, Engineering (Kandell) would receive a percentage in the ownership of the corporation formed to develop the CATV franchise (Tr. 13858–59). Under this arrangement, Mr. Kandell did secure a CATV franchise for East Lansing which has a common border with Lansing. Mr. Kandell also did incorporate National Cable Company (National) to pursue the CATV franchise for East Lansing. Mr. Kandell was the Vice President of National with a stock option. Mr. Henderson was one of the largest stockholders of National (Tr. 13706–7, 13864–5 and 13878). The National plan was to obtain the CATV franchises for both Lansing and East Lansing as both could be operated out of the same office and with the same staff.

20. Thus, when the Lansing Special CATV Committee decided to hold hearings on the 11 applicants for the franchise (which included GTI and

National),[5] National had the CATV franchise for East Lansing and a vital interest in the franchise for Lansing. Mr. Kandell made his presentation to the Lansing City Council on May 10, 1966 on behalf of National (ALCU Exhibit 234 and GTI Exhibit 225). At the same time of National's presentation to the Lansing City Council, Councilman Moore was unemployed and looking for a job (Tr. 13713). Sometime in October, 1966, about the same time as National acquired the East Lansing franchise, Mr. Kandell hired Mr. Moore, who at that time had no CATV experience, at a starting salary of $15,000 per year (Tr. 3867, 3869–70 and 13710–11). According to Mr. Kandell, Mr. Moore was engaged in "busy work" such as setting up files for the proposed East Lansing CATV (Tr. 13721–22). It was hoped that National would also acquire the Lansing CATV franchise so the same office could serve both systems. Also, according to Kandell, Mr. Moore understood that if the Lansing franchise was acquired, Mr. Moore would manage both (Tr. 13722–23). Further, there was an understanding that Mr. Moore would receive a part of Mr. Kandell's interest in National (Tr. 13780). Kandell said he was given to believe by Mr. Moore that he was in a strong position to dictate who would get the Lansing CATV franchise and he "could deliver" the Lansing CATV franchise to Kandell (Tr. 14062). However, Kandell recalled that Moore made it clear that in taking the job with National he would have to withdraw as Chairman of the Special CATV Committee in Lansing and he would not vote on any matter, in his position of Councilman, involving CATV and that he would not use his influence to assist Kandell (Tr. 14129, 13889 and 14123). Both Kandell and Moore agree that Kandell did not reveal his business relationship with Henderson at the time Moore was hired by National (Tr. 14001, 3877–8). Mr. Moore then did resign as Chairman of Counsel's Special CATV Committee in October, 1966 stating that the resignation was the result of taking employment "with a CATV firm whose offices will be located in this area" (ACLU Exhibit 234, GTI Exhibit 225). Mr. Moore also requested an opinion from the City Attorney (Mr. Max E. Wagner) that his employment with National was not in conflict of interest with his position as a Lansing City Councilman (ACLU Exhibit 234, GTI Exhibit 225).

21. As is now apparent there is a conflict between the testimony of Moore and Kandell. The City Attorney's ruling on the conflict of interest issue is as follows:

> You have informed me that [National's] business is constructing and operation [CATV systems] and that it has obtained or is in the process of obtaining license to do this in [East Lansing]. You have further informed me that [National] will not own, operate, or have any financial interest in [CATV] to be operated in the City of Lansing (GTI Exhibit 225).

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[5] National, Engineering and Kandell are terms used on an interchangeable basis. All refer to the agreement between Henderson and Kandell for securing CATV franchises.

However, it was clear that while Mr. Moore was no longer Chairman of the Special CATV Committee, he could not control his duty to vote as a Councilman as the Rules of the Lansing City Council require that a member can be excused from voting only by a ⅔ vote of the Council (Tr. 3832).

22. While all this was going on, GTI was in active negotiations with the City Attorney as to the terms of its CATV franchise and there appeared to be considerable dispute as to the fee GTI should pay to the City annually for the CATV franchise. While these negotiations were going on, both Kandell and another of the original 11 applicants, Time Life, wrote to the City Council in November, 1966 that they were still interested in the Lansing CATV franchise. It also appears that Kandell had submitted a proposed franchise agreement on September 21, 1966 which was the subject of a follow-up letter from Kandell's local attorney, Mr. Bruce Hollowick, that Kandell still stood behind his proposed franchise agreement and that he would be agreeable to a fee for the City of $25,000 or 3% of gross receipts, whichever is greater (GTI Exhibit 225). Many other areas of the franchise negotiations between the City Attorney and GTI were still in dispute such as the status of a CATV as a public utility, amount of performance bond, the use of the city's poles and right to inspect (ACLU Exhibit 234). Returning now to Councilman Moore, he continued to insist that after his employment with National (Kandell) he had no involvement with the Lansing CATV matter (Tr. 3831, 3833–35, 3883, 3925–27, and 3932). Further conflicts of testimony thus develop. Mr. Kandell, a former city attorney (Judge Cavanagh) and his fellow council members contradict Mr. Moore. The entire subject of the credibility of Mr. Kandell *vis a vis* Mr. Moore assumes added significance in this record as it developed Mr. Kandell was confined in a psychiatric ward of a Galveston, Texas hospital for 10 days in early January, 1968 and he was treated as a manic depressive for the next seven or eight months (Tr. 13771–77, 14033, and 14034). During this time Henderson terminated his business association with Kandell.[6] Likewise, GTI through a series of witnesses, sought to discredit some of Councilman Moore's statements.

23. It is Mr. Kandell's testimony that from October, 1966 to December, 1967, Messrs. Kandell and Moore maintained telephone contact on a virtually daily basis (Tr. 13739) and Mr. Kandell made approximately twenty trips to Lansing (Tr. 13733–34). Mr. Kandell states Mr. Moore acted as a "lobbyist" for Engineering (Kandell) (Tr. 13725) and introduced Mr. Kandell to other Lansing City Council members (Tr. 14013) and attended most of the private meetings Mr. Kandell had with individual Lansing City Council members (Tr. 14006–07). Mr. Kandell testified that

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[6] Mr. Kandell states this whole episode was caused by excessive work and serious hornet stings for which large dosages of cortisone were prescribed.

Councilman Moore was "privey" to the negotiations with GTI over the CATV franchise terms (Tr. 13725) and kept him informed about developments (Tr. 13722), including the positions taken or statements made by representatives of GTI (Tr. 14125–26). Mr. Kandell stated he used this information to his advantage (Tr. 13764–65). For example, Mr. Kandell knew that GTI and the City Attorney (Wagner) were in disagreement over the amount of the franchise fee. So Mr. Kandell sent letters to the City Council indicating his willingness to pay a higher fee (GTI Exhibit 225, Tr. 13762–63 and 13765–66). In fact, Mr. Kandell traveled to Lansing with a $12,500 check from Mr. Henderson to present to the City Council. Mr. Moore had possession of this check and showed it to other Council members (Tr. 12958, 13745–46 and 19272). Next, GTI called as their witnesses all members of the City Council at that time. Two of the members, Mr. Smith and Mr. Dean, were also members of the Special CATV Committee. They stated that after Mr. Moore's employment with National (Kandell) his attitude changed and began to oppose the GTI franchise application (Tr. 12951 and 13464). The other member of the Special CATV Committee, Mr. Perrin, testified that Mr. Moore openly endorsed Mr. Kandell's CATV application (Tr. 13052–53). Councilman Ferguson testified that Moore urged his fellow Council members to hold out for a high franchise fee (Tr. 13629–30). Councilman May testified that Mr. Moore told fellow Council members they should ask for "more" in the franchise than was being offered by GTI (Tr. 13495–96). Other Council members testified in a similar manner: Ms. Belen (Tr. 12766–68); Mr. Adado (Tr. 14842–43); Mr. Bradshaw (Tr. 13188–190).

24. GTI called as a witness Judge Michael F. Cavanagh who had served as Assistant City Attorney until October, 1967 and as City Attorney from October, 1967 to April, 1969 (Tr. 13269). Judge Cavanagh testified that Mr. Moore frequently contacted him in an effort to obtain knowledge of events that were taking place relative to the CATV issue and that Mr. Moore's contacts in this respect were more frequent than any other member of the Council (Tr. 13278–79).

25. GTI and the City Attorney between September, 1966 and November, 1966 tried without success to reach some agreement on the terms of the CATV franchise. In fact, GTI was also at this time attempting to get a waiver of FCC Rule 74.1107 to carry distant signals. The GTI waiver request was filed November 15, 1966 which request was set for hearing on February 17, 1967 and on October 9, 1967. GTI withdrew its request for waiver of the FCC distant signal rule (ACLU Exhibit 234). The GTI City Attorney impass continued, so on April 4, 1967, the City Council unanimously adopted a resolution (with Moore abstaining) that the GTI CATV franchise be approved with specified conditions (ACLU Exhibit 234 and GTI Exhibit 235). After this further negotiations were held between GTI, the City Attorney and individual Council members over the terms of the

franchise. Nothing would break the deadlock between GTI and the City, so on September 11, 1967, Councilman Adado introduced a motion to rescind the franchise awarded to GTI and appoint a four member board to prepare a proposed franchise to be offered for bid to interested applicants. Councilman Belen then introduced a motion to refer Adado's motion to the Committee of the whole.[7] This latter motion was adopted by a vote of Adado, Amas, Belen, Ferguson, May and Moore (ACLU Exhibit 234).

26. By September, 1967, the whole CATV issue insofar as GTI was concerned was receiving local media coverage. Lansing radio station WILS aired an editorial on September 1, 1967 opposing a grant of the franchise to GTI. Station WITL followed with editorials opposing GTI on September 6 and 8, 1967 and the Lansing *State Journal* on September 10, 1967 (GTI Exhibit 60). Next on September 13, 1967, GTI carried an editorial which attacked the Council's failure to grant GTI the CATV franchise on its (GTI) terms. The editorial of which Harold Gross was the primary author (Tr. 1924) singled out Councilmembers Adado and Moore. Adado was described as "a misguided neophyte who shouts to be heard, but says little that makes sense." Next, the GTI editorial contended that Moore had a conflict of interest in that he was attempting to take the CATV franchise away from GTI and that he had a personal stake in Mr. Kandell's efforts to get the franchise. As is the case with this GTI editorial, certain other editorials will be dealt with in this proceeding. It should be clear that GTI editorials are not *per se* in issue. The only purpose served in considering editorials is to develop the news slanting or blackout issue which could show a private purpose of GTI. Thus, the theory alleged by the Bureau and ACLU is that GTI, in this instance, had an enemies list of City Council members depending on how they voted on the GTI CATV franchise request. Those Council members who voted against GTI are alleged to have been blacked out on GTI news coverage unless the news item would describe the "enemies list" Council member in some derogatory way. To the extent that the record will permit a conclusion that the GTI news was manipulated in the manner alleged, then GTI editorials were considered only insofar as they formed a part of the overall GTI alleged news suppression scheme.

27. Councilman Moore was offered a chance to reply to the GTI editorial but he declined (Tr. 3803–05 and 3798). However, some six days after this editorial, Mr. Moore did again seek a ruling from the City Attorney (then Mr. William H. Van Duzer) on the conflict of interest issue. This time he did disclose that he did have a prospective stock interest in National. The City Attorney ruled that he was in conflict of interest (ACLU Exhibit 234, GTI Exhibit 225 and Tr. 3888), stating in part:

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[7] The effect of this was to have the entire City Council act on CATV matters.

> As the vice-president of National Cable Company, Karl Kandell has a direct employer-employee relationship with you. Under your employment contract you will directly share in the profits of the company. As long as Karl Kandell bears a direct employer-employee relationship with you, by virtue of his vice-presidency in National Cable Company, and at the same time is a bidder for the Lansing Franchise, I believe there exists a direct financial interest between your employment and the subject matter under discussion [the Lansing CATV franchise] before the Committee of the whole (GTI Exhibit 225, p. 127).

The City Attorney's ruling also commended Councilman Moore "for his forthright and voluntary approach to the problem".

28. The CATV franchise tendered to GTI on September 27, 1967, provided for a $12,500 initial franchise fee, increased percentages of annual gross revenues to the City, 12 months construction time and a provision for unilateral revocation of the CATV franchise if GTI failed to fulfill the terms of the franchise. GTI was given until October 2, 1967 to accept or reject (ACLU Exhibit 234, p. 8 and GTI Exhibit 225, p. 128). On October 2, 1967, GTI advised the City Council that it rejected the CATV franchise under the terms proposed (ACLU Exhibit 234, p. 8 and GTI Exhibit 225, p. 130). GTI was still not prepared to accept the amount of the franchise fee (Tr. 1827–28) and GTI believed the unilateral right of the City to cancel the franchise did not protect the rights of GTI (Tr. 15443–44 and 15445). GTI also took the position that the terms of the proposed franchise were inconsistent with the FCC's consideration of the GTI distant signal rule waiver request (GTI Exhibit 225, p. 130).

29. Next, the City Council in November, 1967 issued a proposed new CATV franchise for the consideration of interested parties. Five applicants, including GTI and Kandell, expressed interest in this new proposal. The City allowed each of the applicants to make a formal presentation to the City Council in January, 1968 (ACLU Exhibit 234, pp. 8–9). During this period of time Mr. Moore traveled to Louisiana to help Mr. Kandell prepare a film to be used in Kandell's presentation to the Council (Tr. 13769–71).

30. In January, 1968, Mr. Henderson terminated his relationship with Engineering (Kandell) and Mr. Kandell then withdrew the Engineering (Kandell) application for the Lansing CATV franchise. At this point further conflict in testimony develops. According to Councilman Ferguson and Mr. Kandell, Mr. Moore then switched his support to another CATV applicant, Consumers Choice Vision System (the Eyde Brothers) and Moore suggested that Kandell support that application (Tr. 13631, 14062 and 14067). However, Mr. Kandell supported the application of GTI. On February 26, 1968, non-exclusive franchises were granted to GTI, and Consumer Choice Vision System. Councilmen Adado, Ferguson, May and

Moore[8] voted against the award to GTI (ACLU Exhibit 234, pp. 10–11). Some question developed as to the nature of the non-exclusive franchise and Mr. Kandell believed the City was going to award an exclusive franchise. It developed that Mr. Kandell regarded exclusive in a technical engineering sense, i.e., the first non-exclusive franchise holder to mount its equipment on the poles would in effect have an exclusive franchise because of the limited amount of space on poles which would preclude other applicants from using these same poles (Tr. 14063–64, 14152–54 and 14183).

31. This long and frustrating process of Lansing seeking someone to install a CATV system was brought to a temporary halt when on April 29, 1968, Edward Lamb Enterprises obtained a temporary injunction which prohibited the City from granting any CATV franchise rights. It was 3 years before this Court injunction was lifted and in 1973 a CATV franchise for Lansing was awarded to Continental Cable Vision (ACLU Exhibit 234, pp. 12–15). However, certain limited CATV activity continued before the Lansing City Council while the Court injunction was pending. In December, 1969, National applied in its own name for the Lansing CATV franchise.[9] The Lansing City Attorney (then Mr. Oskar M. Hornback) ruled that Mr. Moore would be in conflict of interest as a result of this application (ACLU Exhibit 234, p. 12 and GTI Exhibit 226, pp. 175–176). After the Court injunction was lifted (August, 1971) LVO Corporation filed an application for the Lansing CATV franchise. At that time LVO Corporation owned 80% of the stock of National (Tr. 3905–06). In July, 1971 the City Attorney (then Mr. Hornback) advised the City Council that Mr. Moore was in conflict of interest because of his employment with National. Moore was advised that he would have to elect between his position as a Councilman and the employment with National. Moore resigned his job with National in February, 1972. GTI aired an editorial about this conflict of interest on October, 1971 (Bureau Exhibit 68. Also see ACLU Exhibit 234, p. 13; GTI Exhibit 226, pp. 187–192; and Tr. 3906–07, 3783 and 3933). Before Mr. Moore resigned from National he

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[8] Mr. Moore's vote here requires some explanation. It appears Mr. Moore had obtained an opinion one week prior to this vote from City Attorney Cavanagh that Moore no longer had a conflict of interest since Mr. Kandell was no longer employed by Mr. Henderson and the National (Kandell) application had been withdrawn by Kandell (ACLU Exhibit 234, p. 9 and GTI Exhibit 226, pp. 147–148). Moore did not reveal the new City Attorney's opinion until he was forced by the Rules of Council to do so. The City Charter requires 5 votes to carry a measure and the Mayor is allowed to vote at Council only to break a tie. Without Moore's vote, the anticipated vote would have been 3 votes against GTI and the measure would not pass (Tr. 13630–31, 13653–54 and 13657–58). However, with Mr. Moore's vote, there was a 4–4 tie and the Mayor cast the deciding fifth vote. Councilman Ferguson testified that Councilman Moore had discussed this maneuver with him immediately prior to the February 26, 1968 meeting (Tr. 13634–35). It does not appear that Mr. Moore's transfer of support to the Eyde Brothers was known to the City Attorney.

[9] This was strictly a Kandell application and Mr. Henderson was in no way associated with the application.

suggested that another Council member, Ms. Belen, purchase LVO stock. When the LVO application was filed three weeks later, she had to get rid of the stock (Tr. 12729–30).

32. This long history between 1966–1973 of the City Council's attempts to bring CATV to Lansing is necessary to understand certain GTI activities which also occurred during this period which form the basis for certain news blackout or suppression by GTI. By 1973, GTI had given up on the Lansing CATV franchise as its distant signal rule waiver had been denied by the FCC and GTI still believed that distant signals were necessary for successful CATV operation at Lansing (Tr. 4711). Now this same period of time will be the subject of facts which are alleged to have occurred at GTI relative to suppressing news of the City Councilmembers that had voted against GTI's CATV proposal.

33. Mr. William Applegate appeared as a witness and he was employed as a newsman at GTI from January 31, 1967 to August 31, 1968 (Tr. 9890).[10] Mr. Applegate was 21 years old when he came to GTI and had 14 months experience with 3 prior radio stations. GTI initially hired Mr. Applegate for its radio news department and in October, 1967 to July, 1968 Applegate served as a newsman in both the radio and TV departments of GTI (Tr. 2326). While Applegate was detailed to State Capitol news coverage he was also assigned to cover City Hall and meetings of the Lansing City Council (Tr. 2326, 2375, 2996–97 and 2457). In the course of his City Hall news contacts, Applegate became aware of the CATV issue (Tr. 2325–27). Mr. Applegate was the co-author with Harold Gross in writing an article about CATV for a Chamber of Commerce publication (Bureau Exhibit 65; Tr. 1926 and 2332–33). Harold Gross would also provide Applegate with an outline on CATV matters from which outline Applegate was to prepare a draft of a GTI editorial which would be reviewed by Harold Gross. Sometimes the drafts had to be revised three or four times before they were acceptable to Harold Gross (Bureau Exhibits 66, 67; Tr. 1924–27, 2330-32 and 14201–04).

34. Mr. Applegate is a most important witness in this proceeding as it appeared that those parts of a Commission 403 proceeding and Mr. Applegate's depositions, pursuant to discovery Rules which were brought into the record of this proceeding, indicated that Applegate received "constant" reminders written by Harold Gross and brought to Applegate's attention by Mr. Robert McCall, the head of the TV News Department of GTI. These reminders were to the effect that the news department was to "blackball" those Councilmembers who voted against GTI on

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[10] As will be developed, *infra*, there were frequent changes in the GTI news personnel and thus numerous ex-employees must be considered during this and all time periods under consideration. It is also clear that while Lansing is in the top 100 market, the GTI stations served as a gateway for young people interested in starting a career in broadcasting.

the CATV franchise (Tr. 2425–29). Mr. Applegate believed the Councilmembers involved in the "blackball" order were Messrs. Moore, Adado, May and Ferguson (Tr. 2334–35, 2456 and 2458). Mr. Applegate was said to have actual copies of the Harold Gross so-called "blackball" order according to reports in the *Detroit Free Press* (Tr. 4298–4300) and statements made to various GTI employees (Tr. 3105–06, 2417–18, 2411, and 2414–15) and that these documents, i.e., the Harold Gross "blackball" order was in the hands of his (Applegate's) lawyers (Tr. 6441–42). Such a document was never produced at the hearing. There was also a reference by the ACLU in a prehearing pleading filed with the Commission, parts of which were published by the Lansing *State Journal* (Tr. 2393 and 2396–97). It appears that Mr. Sorg (considered *infra*) had advised the ACLU that Applegate also had a tape recording of a telephone conversation Applegate had with a former Lansing City Councilmember. The telephone conversation was claimed to concern a discussion of tactics which might be employed to secure the votes of other City Councilmembers. The Lansing *State Journal* story noted that Applegate denied that he had made such a statement. The news story went on to relate that Mr. Sorg had given the ACLU an affidavit which Mr. Applegate had seen. Mr. Applegate termed the affidavit as hearsay and he might start a libel suit of his own and he also took issue with other words attributed to him in the news article. The *State Journal* reporter was called as a witness and she testified that wherever the article purported to quote Mr. Applegate, such quotes were correct (Tr. 12190–95). These facts are related only insofar as it appeared from the pre-trial pleadings there would be hard documented evidence showing that Harold Gross did "blackball" members of City Council who voted against his private interest (CATV franchise). Thus, the news, pursuant to the written order, would be slanted or suppressed as to Councilmembers who voted against Harold Gross and his editorial policy was subverted to assist in this overall "blackball" scheme. However, the evidence in this area deals with alleged conversations, shop talk by members of the news department during this period of time and of strong personality clashes between Applegate and his fellow employees—some of which requires a witness to recall what happened up to 11 years ago. Thus, the evidence will deal with various conversations and a determination of the nature of Mr. Applegate's duties at GTI, i.e., was he only a newsman with an assigned beat, or, was he a lobbyist for GTI or Harold Gross.

35. Mr. Applegate states that during a conversation he had with Harold Gross concerning CATV, Mr. Harold Gross spoke in anger that he did not want to see Moore and certain Councilmembers (believed by Applegate to be Messrs. Adado, May and Ferguson) (Tr. 2334–35, 2456 and 2458). Mr. Applegate states that in spite of this order from Harold Gross, he did not "blackball" any Councilmember and he does not know if anyone else at

GTI followed a "blackball" practice (Tr. 2358–59, 2458–64). He did recall that shortly after he aired a story on a Councilmember, he believed was Mr. Ferguson, he was reminded by someone he believed to be Harold Gross or possibly some other supervisor and he was again reminded of the "blackball" policy (Tr. 2352–2365–68 and 2477–78). The supervisor may have been the News Director, Robert McCall, but if there was a conversation with Mr. McCall, he could not relate the nature of the conversation (Tr. 14231–34).

36. Mr. Applegate testified on two occasions in this proceeding. At his first appearance, it appeared that while he did perform duties as a newsman, his more important function was to work directly with Harold Gross in obtaining the CATV franchise at Lansing for GTI. He furnished reports to Harold Gross on Council Committee of the Whole meetings where CATV was discussed. He also met with individual members of City Council and obtained reports as to the relative merits of GTI's CATV proposal *vis a vis* the other applicants. All of this information was provided directly by Applegate to Harold Gross (Tr. 2337–2338). Applegate also stated that on the direction of Harold Gross, he sought out Councilman Moore in November, 1967 to get details of Mr. Kandell's ability to finance his CATV proposal (Bureau Exhibit 73 and Tr. 2330). Applegate helped Harold Gross prepare editorials which were broadcast over GTI facilities relating to the proposals then pending before the City Council on CATV (Bureau Exhibits 66, 67; Tr. 2331 and 14201–04). Applegate co-authored with Harold Gross an article on CATV which attacked some of the ideas the City Council then had as to what the terms and conditions of a CATV franchise should contain, namely, the thought that a CATV should be classified as a public utility; that Council should have the right to revoke a CATV franchise without cause and the issue of the high annual payment (Bureau Exhibit 65).

37. Mr. Applegate stated he met with Mr. Harold Gross in the latter's office on an average of three times a week to discuss CATV developments in connection with GTI's pending CATV application (Tr. 2330). At these meetings, Applegate stated that Harold Gross referred to his "enemies" on the Council that he did not want to see on the air (Tr. 2334). Mr. Applegate stated he tried to advise Harold Gross that the requirement that the so-called "enemies" be kept off the air was not a good idea to which Harold Gross responded that he did not care about Applegate's opinion on the matter (Tr. 2336 and 2339). Mr. Applegate's best recollection is that the meeting with Harold Gross in which there was an exchange of views on the "enemies" took place in the fall of 1967 or early 1968 (Tr. 2456). Mr. Applegate recalled that the "enemies" discussion followed some unknown action by the City Council (Tr. 2456). Mr. Applegate stated at some time subsequent one of the Harold Gross' four "enemies" appeared on the air and Harold Gross again reminded Applegate that the

"blackball" order was still in effect (Tr. 2353) and the order was still in effect as of the time Applegate departed from WJIM (GTI) sometime in the early fall of 1968 (Tr. 2358). Mr. Applegate stated that after he received the original "blackball" order from Harold Gross, he passed this information on to members of the news department, including reporters and cameramen (Tr. 2340). Mr. Applegate recalled a humorous discussion with Councilman Moore concerning Councilmembers turning their backs whenever the TV cameras came in (Tr. 2345–46 and 2487–88) and he may have discussed the "blackball" order given by Harold Gross with Councilmembers Adado and May (Tr. 2346, 14208 and 14212–13). Mr. Applegate also recalled some of his news stories in which he personally deleted any reference to the four "enemies" Councilmembers. He does not recall the stories but thought they dealt with CATV (Tr. 2358–59, 2459, 2460 and 2461). Applegate testified that the four "enemies" Councilmen were not deleted because of his news judgment, but, because of the order from Harold Gross (Tr. 2461). He did not know if any other members of the news department carried out this order (Tr. 2355).

38. Mr. Applegate said he recalled a single instance when he directed a cameraman not to include certain Councilmembers in silent film footage being taken of the entire Council and it was at this time he made the humorous remark asking Councilmembers to turn their backs to the camera (Tr. 2340–42, 2345–46 and 2491–92). The testimony of Mr. Applegate with respect to deletion of certain names of Councilmembers, that it was not based on his news judgment but on Mr. Harold Gross' order, was modified to the extent that he could not testify that the use of the deleted names was really necessary to the story and he maintained that he never suppressed a story that he deemed newsworthy (Tr. 2358–59 and 2458–64).

39. As matters now stand with respect to Mr. Applegate, neither he nor anyone else has produced the "blackball" or "enemies" memo from Harold Gross and the facts now turn to a series of witnesses consisting of GTI employees and Harold Gross and City Councilmembers.

40. Mr. Robert McCall was called as a witness and he was the GTI TV news director from mid-July, 1967 to the end of March, 1968 (Tr. 2686). His staff consisted of two cameramen, Carr and Davidson, and one reporter, Mike Wright. Mr. McCall also anchored the noon and 6 PM news (Tr. 2886–87). McCall recalled that the radio news department of GTI consisted of Marvin Boone, the radio news director, and one full-time reporter, Applegate (Tr. 2687). However, McCall stated that City Council meetings were covered for TV by Applegate with the filming done by Larry Carr (Tr. 2688). Applegate would then prepare, in most instances, the Council story carried on TV (Tr. 2689). McCall was aware that Applegate spent a good deal of time with Harold Gross as he had seen Applegate on a number of occasions come out of Harold Gross' office. McCall observed

that Applegate spent more time with Harold Gross than he or any member of his staff (Tr. 2960–61). Important here are statements given to FCC field investigators and depositions before the actual hearing started to the effect that McCall had no discussions with Harold Gross about any blackout order of Harold Gross with respect to City Councilmembers (Tr. 2712–15, 2719–20 and 2758). But he did recall a brief conversation with Applegate concerning the matter (Tr. 2691–92 and 2695). However, at the hearing McCall gave testimony other than that given to FCC investigators and in deposition. At the hearing he said that he did have a brief "30 second" conversation with Harold Gross immediately following his hallway conversation with Mr. Applegate on the same subject, i.e., a blackout order against certain City Councilmen (Tr. 2692–93 and 2695). Since there were no documents on the blackout or enemies list, and 11 years had passed since the event, Mr. McCall's testimony will be dealt with here, as revised, at the hearing.[11] The "30 second" conversation with Harold Gross was to the effect that Mr. Harold Gross asked Mr. McCall if McCall understood the instructions received from Bill Applegate. Mr. McCall replied "Yes I did" and then Harold Gross said he did not want to see those people on television unless they get into trouble (Tr. 2692). However, neither Applegate nor Harold Gross had stated any names of the people who were not to be on television and outside of this bit of testimony which differed from his (McCall's) prehearing statements, he said he never heard anything further about it from Applegate or anyone else (Tr. 2699 and 2710–11). Mr. McCall thinks the conversation with Applegate (30 seconds), immediately followed by the one with Harold Gross, took place in early October, 1967 (Tr. 2695). Mr. McCall did not discuss this with anyone on the news staff and he continued to deal with City Council news in a normal, routine fashion. He stated he did not suppress news stories and he knew of no one who did (Tr. 2727–28, 2748–50 and 2769–71). Mr. McCall did recall an incident when a cameraman, Mr. Larry Carr, complained to him that Mr. Applegate was interfering with his filming of City Council. It appeared the complaint was directed to Mr. Applegate's claim that he had authority to tell Mr. Carr how to do his work when they (Applegate and Carr) were on a common assignment (Tr. 2731–32 and 2584).[12]

41. Mr. Harold Gross testified that he does not recall the conversations as related by Applegate and McCall, but, he could have discussed the CATV issue and Mr. Moore's conflict of interest or expressed views about

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[11] Nevertheless, it is unclear why when McCall recalled his conversation with Harold Gross about one month before he testified he did not informally advise the parties at the deposition session or the FCC investigators that his testimony would now be different from that given in the 403 investigation or discovery.

[12] There seemed to be a constant conflict between TV news reporters and TV cameramen as to who was in charge on a common assignment.

undue coverage of local political figures, or directives as being in conflict with his long-held views on fairness in news coverage, considered *infra*. Mr. Harold Gross does draw upon the talents of various staff personnel from time to time (Tr. 1926–27 and 6574–75). Because Mr. Applegate was familar with the CATV subject he was asked to assist in writing the Chamber of Commerce article (Tr. 1926). However, Harold Gross stated that he did not authorize Mr. Applegate to be a lobbyist on CATV matters and he had no powers and privileges over his fellow employees, or, to be anything other than a news reporter (Tr. 15167). Mr. Harold Gross stated it is not his policy to involve new, young employees on significant station or corporate matters (Tr. 15108–09 and 15387–88). It is Mr. Harold Gross' testimony that he tends to take personal day-to-day supervision over the day-to-day operation of the news department. However, the amount of his personal supervision depends on how "strong" he believes a particular TV and radio news director may be. Mr. Harold Gross stated that during the Applegate period, he did not observe any change in the nature of coverage given to City Councilmen (Tr. 15175–76). According to Mr. Harold Gross, the first time he ever heard views as to how various City Councilmembers were to be covered on GTI news was in the fall of 1973 when the Detroit *Free Press* published such allegations (Tr. 11162). It was at this same time (fall, 1973) that Applegate had a conference with a GTI representative (Mr. Tom Jones) and asked that GTI help in the payment of his legal fees; that he did not intend to be made a scapegoat and he had documentary proof which would link Mr. Harold Gross to the blackout order. Mr. Harold Gross turned down all of Mr. Applegate's requests stating that he would not touch assistance to Mr. Applegate "with a 10 foot pole" (Tr. 6446–47 and 15677–78).

42. Mr. Harold Gross then provided support for his version by producing all employees, former employees (except four)[13] and the City Councilmembers during the Applegate time period. The general tenor, which will be considered *infra* on an individual witness basis, is that Mr. Applegate had a braggadocio attitude on the CATV matter which was ignored by his fellow workers and never brought to the attention of Harold Gross, i.e., while Mr. Applegate was employed by GTI. Further, there was no blackout of City Council based on the testimony of then City Councilmembers and such documentation as is still available.

43. Five GTI newsmen testified: Mr. Charles Davidson, employed by GTI from April, 1966 until April, 1968 (Tr. 2995–96); Mr. Larry Carr, employed by GTI from March until September, 1967 (Tr. 2579); Mr. Paul Kowal, employed by GTI from April, 1968 to 1970 (Tr. 3392); Mr. Jerry

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[13] The four missing employees include one known to be deceased. Two could not be located and the fourth was represented to have little, if any, knowledge of the matter in issue (Statement of Counsel (Tr. 13194–95)).

Carr, employed by GTI from April, 1968 until June, 1969 (Tr. 12435); and Mr. Wayne Davis, employed by GTI from April, 1968 until October, 1970 (Tr. 12300 and 12302–03).

44. Mr. Charles Davidson generally worked the day shift but he does recall covering meetings of City Council which were held at night. He could not recall how often he had done so (Tr. 2999). Davidson did recall being at one City Council meeting with Applegate. As he was preparing to film the Council, Applegate reminded him that certain members could not be filmed (Tr. 3014–15). Davidson did recall that four Councilmembers were not to be filmed (Tr. 3016). Davidson then followed Applegate's instructions by taking close-up shots of those members who could be filmed and then shooting a so-called cover shot which was of the entire Council, but so far back that no one individual could be recognized (Tr. 3015). Davidson said he specifically refrained from taking a closeup shot of Harold Moore, which otherwise he normally would have done (Tr. 3015). When Davidson terminated his employment with GTI, he had not received any notice that Applegate's instructions were rescinded (Tr. 3091).

45. Mr. Larry Carr's[14] regular hours as a GTI cameraman were 1 PM to 10 PM. His regular duties included coverage of City Council meetings (Tr. 2580). Mr. L. Carr did recall coverage of the City Council meetings with Mr. Applegate and there was one occasion when Carr had an argument with Applegate over the filming of certain City Councilmembers (Tr. 2582). Mr. L. Carr was in the preparation for taking long-shot pictures of the Council when Applegate told him that "I couldn't shoot pictures with certain people in it" (Tr. 2582 and 2596). Mr. L. Carr recalls that the names of Councilmembers Moore and Ferguson were mentioned and there may have been others. The argument between L. Carr and Applegate continued and ended when L. Carr departed without shooting any film (Tr. 2583). It appears that, according to L. Carr, when Applegate issued such an order to him, L. Carr challenged his authority in this respect. Applegate's response was that he was running the show and L. Carr was subject to Applegate's orders in this respect and that Applegate's authority came from Harold Gross (Tr. 2593). Shortly thereafter L. Carr asked the head of the news department (McCall) if he had to follow such instructions from Applegate. McCall replied that Applegate's instructions on City Council coverage should be followed. L. Carr then asked McCall not to assign him to City Council anymore. L. Carr stated that he was then in the process of trying to get a new job and the pictures Applegate would permit him to take of City Council would reflect adversely on his ability as a good TV cameraman (Tr. 2584 and 2607). Thereafter, L. Carr can recall only one other assignment to City Council, but that was to film a speech given by the Mayor. L. Carr did recall during this last

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[14] Mr. Larry Carr and Mr. Jerry Carr are brothers and both worked for GTI as TV cameramen.

filming assignment at City Council, he did state to one or two Councilmembers that he could not take their picture because ". . . you're on Gross' shit list." L. Carr can recall no response to this remark. L. Carr testified that he had no knowledge of any directives from Harold Gross to suppress news coverage (Tr. 2597–98) and Harold Gross never criticized any of L. Carr's films of the City Council or any of its members (Tr. 2590, 2594 and 2597–98).

46. Mr. Paul Kowal is another important witness in the proceeding since he had a "black book"[15] which was destroyed before the hearing that had the names in it, among other things, of Councilmembers who were not to be filmed. Mr. Kowal was employed at GTI from February, 1968 to August, 1970 (Tr. 3392) and he replaced Davidson. Prior to the departure of Davidson, he told Kowal that, if he were assigned to cover a City Council meeting, he should avoid any film shots of the entire City Council as there were several members whose pictures it was not wise to put on the air (Tr. 3393). Kowal recalled only two of the names provided by Davidson, i.e., Moore and Ferguson. Davidson advised Kowal that a GTI enemies or blackball list was the result of Harold Gross' dispute with the City Council over CATV. Davidson suggested that Kowal seek more information on this by checking with Applegate. Kowal did then follow through with a check with Mr. Wright, then acting news director, and Applegate. Wright told Kowal to check with Applegate about any blackout order (Tr. 3343 and 3395). Both Wright and Davidson told Kowal that Applegate was Harold Gross' man at City Hall for keeping Gross up-to-date on CATV matters (Tr. 3400).

47. It appears that Mr. Kowal had a hard time remembering names so he carried with him as a memory aid a black pocket-size book in which he noted the names, addresses and telephone numbers of public figures, newsmakers and the like (Tr. 3423, 3436–37, 3439, 3478–79 and 3494). Mr. Kowal jotted down on the inside cover of this book the names of Councilmembers not to be covered which names were made known to him by Applegate[16] (Tr. 3422–23 and 3481). Next in point of time and about one month after Kowal's employment with GTI, Mr. Kowal asked Mr. Tom Jones about the names Kowal had listed in his black book as persons not to be covered. Mr. Tom Jones in strong terms advised Kowal to forget it (Tr.

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[15] While the term "black book" was often used in the hearing, it actually was a pocket notebook carried by Kowal which contained information a TV cameraman would have to know. When one book was filled another was started, and only information of a current nature would be transferred to the new book.

[16] The ACLU requests a finding that there were 12 names on Kowal's list, including that of Mr. Ramsey who is connected with another alleged news suppression by GTI. No finding can be made on the total number of names in the black book list. However, Mr. Ramsey was not one of them (Tr. 3440).

3494, 3448–49, 6377–78 and 6380–81),[17] i.e., the "black book" list was to play no part in who Kowal decided on a news judgment basis to cover or not to cover. After Kowal received Mr. Jones' order as to the alleged blackball names, there never again arose a question of filming the persons on the list and he did film them "without a second thought." Also, prior to Kowal's meeting with Jones, no question arose of his filming any person on his list (Tr. 3494, 3448–49, 6377–78, 6380–81 and 3494). Mr. Jones never took this matter up with Harold Gross as he said the list (Kowal's blackout list) did not originate with Harold Gross (Tr. 6381).

48. After the departure of Applegate from GTI employment (August, 1968) and the order from Jones to forget it, the so-called enemies list continued to come up from time to time. Mr. Brad Bate was made news director at GTI in July 1969 and he terminated this employment in March, 1970 (Tr. 2809). Several days after Mr. Bate arrived, Kowal showed the list of blackout names in the black book to him. Mr. Kowal did this in a humorous conversation (Tr. 6382–86). However, when Mr. Bate appeared to be looking at the list in a serious manner, Mr. Kowal became "terribly chagrined" (Tr. 6386–87). Mr. Bate then told Mr. Kowal, for the second time (Jones was the first time), to forget the list and that Mr. Kowal should understand that his assignments would be under the control and supervision of Mr. Bate and that Mr. Bate would answer to Mr. Harold Gross. After this conversation, Mr. Kowal destroyed the list (Tr. 2813–16, 3438 and 3488). Mr. Kowal did recall that he filmed Mr. Ferguson during the summer of 1969 while Mr. Bate was news director (Tr. 3401 and 3497). The Bureau pursued one other matter indirectly involving Mr. Kowal, that cannot be associated with any period of time other than during Kowal's employment with GTI. It appears that Mr. Harold Gross would have meetings in his office with the news staff and Mr. Kowal attended several of these meetings (Tr. 3405). Mr. Kowal does not know what was discussed at one of the meetings other than Mr. Harold Gross was critical of a news reporter whose name Mr. Kowal could not recall. It seems that one of the reporters had aired a story which Mr. Kowal believed involved Mr. Ferguson although it is possible the story could have concerned someone else (Tr. 3422). In any event, Mr. Kowal believes that Mr. Harold Gross "said

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[17] At times, these findings will introduce new names such as Tom Jones who is essential to the facts of a particular time. Mr. Tom Jones will be referred to many times, *infra*, in connection with other events. At this time, it is important to note that Mr. Jones was regarded as the Number 2 man at the station, i.e., directly under Harold Gross. Mr. Jones did perform all types of functions on the operational side of the station and his directions were regarded as a final order from the highest level of management. He held many position titles and often functioned in areas of station operation where he appeared to have no authority. However, all powers either granted to Jones by GTI or assumed by Jones, except in a few rare instances as pertinent here, did, in fact, represent the final management position.

something to the effect that he didn't want to see that S.O.B. on his station again" (Tr. 3406).

49. Messrs. Jerry Carr and Wayne Davis never heard of the matter, i.e., blackout by GTI of certain City Councilmembers (Tr. 12442–43, 12448–49, 12319–20 and 12305–06). However, there were perhaps two or three occasions when Applegate covered City Council with a TV cameraman that Applegate either prevented close-up shots of some City Councilmen or prevented a wide camera shot of the Councilmembers. These occasions occurred when Applegate was covering a City Council story with a TV news cameraman (Tr. 2582, 2584 and 3015–16).

Various Other Employees at GTI During Applegate's Tenure

50. Mr. Michael Wright was a member of the GTI news department both before, during and after Applegate's tenure (Tr. 10570). He also served as Acting News Director from April, 1967 until Mr. McCall arrived in mid-July, 1967. Mike Wright was again Acting News Director, after McCall departed, from March, 1968 to August, 1968 (Tr. 10582). Mr. Wright did recall that he was told by a cameraman that certain City Councilmembers were not to be filmed. However, Wright instructed the cameraman to film Council and Councilmembers as warranted (Tr. 10597–99, 10600, 10723, 10796–98 and 10803). Mr. Wright did not know who gave such an instruction to cameramen. However, after his instruction to the cameraman, he considered the matter closed and did not take this up with Harold Gross (Tr. 10599). As Wright recalls the matter he believes that the cameraman indicated that about half of City Councilmembers were not covered (Tr. 10597–98). He subsequently recalled that the reference was to four Councilmembers not covered but that these Councilmembers were covered regularly and in the case of Mr. Ferguson, he was frequently covered (Tr. 10600–01 and 10644–46). Wright did remember that it was Applegate who had directed news cameramen not to cover certain Councilmembers. Wright did also recall that certain cameramen complained about Applegate's instruction to omit filming certain Councilmen and Wright told them not to pay any attention to Applegate, but, he is not sure if they ever followed Applegate's instruction. However, Wright did recall telling Applegate to leave the newspeople alone (Tr. 10630, 10714–15, 10756, 10759, 10716, 10759 and 10761).

51. Mr. Marvin L. Boone served as a Radio News Director during Applegate's time (Tr. 9869, 9871, 9873 and 9885–86). It was Mr. Boone's testimony that throughout the four or five years he headed the Radio News Department, Mr. Harold Gross did not interfere with the operation of that department (Tr. 9880). Boone does recall that Applegate told him that certain members of the City Council were to be excluded from coverage (Tr. 9981–82). Mr. Applegate never told Boone the names of Councilmen to be excluded and he (Boone) never received any complaints

from Councilmembers about their coverage (Tr. 9848). Applegate did tell Boone that certain Councilmembers were excluded because of their votes on the CATV franchise (Tr. 10026). But Boone never checked this out with Harold Gross because Applegate had a constant working relationship with Harold Gross. Apparently, during Applegate's tenure with GTI, the news room employees were upset about the exclusion of Councilmen from news coverage. However, Boone testified that if a Councilmember was excluded from coverage, it would have been done by Applegate while he covered a Council matter for radio news and it would have been the Applegate news coverage which was aired over radio as written by him. Boone did accept Applegate's news stories on CATV as written by him and the news staff were told not to rewrite Applegate's CATV stories (Tr. 9932–33 and 9985–87). Next, nine GTI news reporters testified. Mr. Walter L. Sorg, employed from June, 1968 until February, 1969 (Tr. 4203–04); Mr. William Beer, March–August, 1968, November, 1968–August, 1969 (Tr. 13007 and 13009); Mr. Robert Ivers, May, 1968–October, 1969 (Tr. 12573 and 12578); Mr. Albert J. Morgan, September, 1967–May, 1968, September, 1968–February, 1969 (Tr. 10207–09, 10242, 10303 and 10309–10); Mr. David Shinn, January-June, 1968 (Tr. 12491–92); Mr. Andrew Such, May–September, 1968 (Tr. 10450–51); Mr. Scott Wyman, April–December, 1967 (Tr. 14626–27); Mr. David Lantz, June, 1966–August, 1967 (Tr. 12131–31a); and Mr. Donald Wiegandt, October, 1965–December, 1967 (Tr. 14687).

52. Mr. Walter Sorg was employed primarily as a radio news announcer and reporter and he did a limited amount of TV reporting. He spent most of his time covering the State Capitol and City Hall (Tr. 4203–06). Sometime near the start of his employment with GTI, Sorg did an interview with Councilman Moore at his City Hall office which was for the "Interview 1240" program.[18] Mr. Sorg had made the decision that Mr. Moore was newsworthy and further he wanted to check out some rumors he had heard before being employed by GTI that four members of the City Council, most notably Mr. Moore, were being blacked out. Sorg's supervisor was Mr. Boone and Sorg did not ask Boone's permission to do the story. Shortly thereafter, Mr. Applegate spoke to Sorg and by "an innuendo" indicated that Mr. Harold Gross did not want Mr. Moore and certain other Councilmembers on the air. Sorg does not recall if Applegate memtioned the other Councilmen subject to the alleged blackout order, but, Sorg understood that the other three were Ferguson, May and Adado (Tr. 4215 and 4217). Sorg also understood that Applegate was the GTI consultant on CATV matters and he had no reason to doubt Apple-

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[18] Interview 1240 was a five-minute interview program carried daily by WJIM (AM and FM) during the morning hours. The program is taped and broadcast by the morning disc jockey. The AM station operates on a frequency of 1240 kHz.

gate's statements. Sorg did not consult Boone about Applegate's remarks but does recall Boone instructing him not to rewrite Applegate's stories on CATV. However, Mr. Sorg did thereafter interview Mr. Moore (Tr. 4219–20, 12294–96). Mr. Sorg never mentioned his discussion with Mr. Applegate to Harold Gross (Tr. 4309) and Mr. Harold Gross never criticized him for the Moore interviews or other coverage Sorg made of the City Council (Tr. 4309).

53. The other eight news reporters testified that they either had never heard of the so-called blackout of certain City Councilmembers until this instant proceeding, or they heard rumors which they disregarded and never memtioned the rumors to Harold Gross. See Mr. Beer's testimony at Tr. 13017–21, 13023 and 13027–29. Mr. Ivers said he had heard the rumors but considered them "rather juvenile" but a way "to have a little fun." He never realized "it would come to this," i.e., a formal hearing which inquired into alleged GTI blackouts of certain City Councilmembers (Tr. 12644–45). Mr. Morgan recalls covering Mr. Ferguson on both radio and TV (Tr. 10238–39). Also, Mr. Morgan corroborates the testimony of Messrs. Kowal and Jones about Kowal's so-called black book. It was Mr. Morgan who suggested that Mr. Kowal discuss the list of blackout names of City Councilmembers with Tom Jones. After such suggestion from Morgan, Mr. Kowal did report back to Mr. Morgan and reported Mr. Jones' reaction to the whole matter (Tr. 10257–58 and 10344). Mr. Morgan never informed Harold Gross about the matter (Tr. 10258 and 10344). The following testimony deals with other news room reporters who had heard nothing more than rumors during their employment with GTI or when this matter was set for hearing: Mr. Shinn (Tr. 12498–99 and 12512–15); Mr. Wyman (Tr. 14635–36, 14639, 14644, 14647 and 14652–55); Mr. Lantz (Tr. 12146, 12148–54 and 12160–62); Mr. Wiegandt (Tr. 14710–11, 14702–03, 14719–20 and 14725–26); and Mr. Luck (Tr. 10466–69, 11787a–87b and 12017).

54. Mr. Howard Lancour was a GTI news director from January, 1971 to October, 1971 and his testimony is important during this period relative to the testimony of another GTI employee, Mr. Richard Little. Mr. Little had testified that while Mr. Lancour was news director, Lancour is alleged to have stated that H. F. Gross stated to him that H. F. Gross almost had a heart attack on viewing coverage of Councilman Moore on GTI TV station. Little testified that Messrs. Lawrence, Blaha and Ray (Tr. 3507–08, 3555–56 and 3563) were present when Lancour related the statement attributed to H. F. Gross. Mr. Little's version was contradicted by all other persons Little identified as privy to Lancour's remark (Tr. 10124–25 and 10178) and the other persons testified that they never received any directive to suppress news coverage of any member of the City Council (Tr. 7606, 12268–69 and 3643–45). Mr. Little admitted that he had interviewed and filmed Councilman Moore on three or four occasions

(Tr. 3511–14). Mr. Lancour stated he did cover Councilman Moore during the period he was TV News Director and that such coverage was based on his own news judgment without interference from GTI (Tr. 10116–17). TV News Directors of GTI from October, 1971–September, 1973 were Messrs. Billman and Ray and the Radio News Director for GTI from 1971–1974 was Mr. Blaha. During this period of time each of the above testified that coverage of City Council was routine and without criticism or directives to the contrary (Tr. 10890–91, 3643–44 and 12268–69). Other station personnel who had served with the station for a number of years and during the critical years in question that were not directly involved in the news operation stated they never heard anything about news suppression on GTI until they read the charge in the Detroit *Free Press* in the fall of 1973. See testimony of Mr. James Gross (Tr. 15696–97, 15455–62, 15547 and 5420–21); Ms. Martha Dixon, Mr. Bryan Halter (Tr. 13155–61) and Mr. Dennis Zartman who stated he was a friend of Mr. Applegate (Tr. 11844 and 11900–02). While the above were not in news *per se*, they each held responsible positions at the station, and in view of the size of the staff and the rather free-form of command at GTI, matters involving anyone at the station or GTI policy or directives were generally known to all.

55. Mr. James Gross, the son H. F. Gross had private family-type conversations with H. F. Gross during the CATV franchise era. He stated that his father expressed dismay that Councilman Moore could continue as a Councilman in view of his CATV interests. However, he believed his father's most important priority was to use news stories which would scoop other broadcasting and print media. Further, H. F. Gross liked and admired Councilmember Joel Ferguson (Tr. 15452–3, 15465, 15454 and 15855). Ms. Dixon who is the moderator of a GTI talk show devoted to cooking and various interesting personalities stated that during 1968 and 1969, Councilman Moore's wife and daughter appeared on Ms. Dixon's show a number of times in connection with the promotion of education of handicapped children. Ms. Dixon never received any directive to cease coverage of Councilman Moore's family and Councilman Moore wrote a letter to Ms. Dixon to thank her for the public service work undertaken with his family. Mr. Bryan Halter moderated a daily interview program on radio which featured a City Council member each Tuesday since council meetings are held on Monday nights. Mr. Halter stated he never received any orders from GTI to blackout any councilmember on this regular Tuesday feature and while the CATV controversy was going on.

Testimony of City Councilmembers

56. As indicated *supra*, there has been testimony given by some former GTI employees that a "blacklist" dictated that certain City Councilmembers not be covered by GTI, unless it was in some disparaging way. Those City Councilmembers said to be on the "blacklist" were there because

they had voted contrary to the conditions GTI desired in a grant by the city of Lansing of a CATV franchise. The various City Councilmembers who sat on the Council during the period GTI sought a CATV franchise were witnesses in this proceeding. It will also be recalled that GTI news employees during this period gave evidence to this so-called news blackout. Mr. Applegate recalls discussions with members of City Council concerning blackout instructions he had received from Harold Gross (Tr. 2345). Applegate also recalls a humorous discussion with Harold Moore concerning councilmen turning their backs whenever the cameras came on (Tr. 2345–46 and 2487–88). Applegate may also have discussed the blackout order with Councilman Adado and May (Tr. 2346, 14208 and 14212–13). Councilman Moore stated that he did receive coverage on WJIM radio (Tr. 3909–10) and he was not covered on WJIM-TV from 1968 until the end of 1971 or the end of 1972 (Tr. 3838–39 and 3987). Councilman Moore indicated that according to Applegate, four ouncilmen were the subject of the GTI blackout order, namely: Moore, May, Ferguson and Adado (Tr. 3793). Moore singled out the GTI failure to cover his views on the city income tax proposal (Tr. 3994) and there were instances where the Council played "musical chairs" on one or possibly two occasions to avoid the filming of one of GTI's alleged four blacklisted Councilmen. It was all kind of a joke about not being filmed for the GTI TV station (Tr. 3795). Further, GTI cameraman Larry Carr, confirmed Applegate's statement that at least Mr. Moore was not to be carried on GTI TV. All of this resulted in a statement to the entire Council on February 19, 1968 in which Moore accused GTI of excluding him and three other Councilmen from being seen or heard on WJIM-TV unless the story would deal with the blacklisted Councilmen in a derogatory manner (Bureau Exhibit 75, pp. 18–19; Tr. 3793 and 3973). Councilman Moore also charged that Applegate stated that one of the local media (GTI) will run editorials and "will tear you down—and we'll tear you down that you (Moore) won't be able to walk down the street and look anybody in the eye. We're that strong, we're more powerful than anybody else in the community" (Bureau Exhibit 75, p. 19). Mr. Moore also proceeded to recall a meeting with Kandell in February, 1968 when Kandell told Moore he had taken a position with GTI and Mr. Moore could get a job with GTI with its expanded CATV operation, but the GTI job would not interfere with Moore's political life since he would have nothing to do. Mr. Moore said this sounded like a bribe. Mr. Kandell then proceeded, according to Mr. Moore, to tell Moore "that they (presumably GTI) would get me, that I wouldn't be able to walk down the street, many other things." Then Moore related an incident which occurred just a few days before the February 19, 1968 Council speech which was a phone call from Kandell about 7:30 p.m. Messrs. Moore and Kandell, according to Moore, talked for about ten minutes at which point Applegate came on the line and told Moore that he would use "all the power of television and radio to ruin my character in this community" and "that when he got done with me, I would not be able to walk down the streets of Lansing" (Tr. 3966–68). Applegate recalls no such telephone call, i.e., between Moore, Kandell and Applegate (Tr. 14191). Applegate also denies making any such statements as Mr. Moore attributed to him about editorials (Tr. 14279).

57. Mr. Moore thus exhibited a strong bias against GTI. GTI Exhibit 154 states among other matters "[t]hat he is not aware of any pressure on the Lansing City Council or attempt to influence the Council by use of recordings of conversations with other Council members" and "[t]hat he has no actual knowledge of any alleged blackout of any members of the Lansing City Council by WJIM-TV." The GTI Exhibit 154 is a sworn to and executed affidavit by Harold A. Moore on the 19th day of November, 1973. Mr. Moore also specifically recognized in his affidavit that it would be used for the purpose of submission to this Commission. Mr. Moore also was not sure which reporters were WJIM-TV reporters. Further, he was shown 14 scripts of stories concerning him in 1971 alone and he recalled seeing at least some of the stories on WJIM-TV (Tr. 3988–97).

58. Turning now to the other Councilmembers during the critical period together with Judge Cavanagh and Mayor Murningham, none would support Mr. Moore in his blackout charges either at the time in question, or, at the time of hearing. See Mr. Adado (Tr. 14858–59 and 14866–67); Mr. Ferguson (Tr. 13621–23 and 13636); Mr. May (Tr. 13499 and 13503); Mr Anas (Tr. 13233); Ms. Belen (Tr. 12731–32 and 12745–47); Mr. Perrin (Tr. 13053–55); Mr. Smith (Tr. 12963–65); Judge Cavanagh (Tr. 13381–83); Mayor Murningham (Tr. 12874–76 and 12879). Except for Councilmember Moore, no one would support the claim or suggestion that certain Councilmembers were requested to turn their backs to the TV camera, even in jest. See Ms. Belen (Tr. 12737–38); Mr. Adado (Tr. 14844); Mr. Ferguson (Tr. 13638–39); Mr. May (Tr. 13504); Mr. Anas (Tr. 13236–37); Mr. Perrin (Tr. 13055–57); Mr. Smith (Tr. 12966); and Mayor Murningham (Tr. 12881–83).

59. It was also the view that Mr. Moore and all other Councilmembers were fairly treated by the radio and TV facilties of GTI. Mr. Adado was a Councilmember from 1967 through 1971 (Tr. 13443 and 14844) and it was his belief that GTI was one of the better facilities covering city news and he noticed no change in the coverage of himself and other Councilmembers during the time of the CATV issue (Tr. 14844–46). Mr. Ferguson was a Councilmember for eight years beginning in April, 1967 (Tr. 13586–87). He stated that GTI provided accurate news coverage of him and that GTI never distorted or suppressed coverage of news in which he was involved and he believes he was always covered when he should have been, i.e., GTI provided TV coverage of him each time there was a major story in which he was involved (Tr. 13620–21). Further, GTI solicited coverage of

Mr. Ferguson more than he would consent to be on GTI facilities (Tr. 13620). Councilmember Ferguson recalls that he appeared on the GTI WJIM-TV "Black Dialogue" several times concerning basic community problems and he recalls that it was Applegate himself that conducted some 5-minute interviews for radio (Tr. 13628). After Councilmember Ferguson was made aware of Councilmember Moore's charges of GTI blackout, Ferguson would watch and listen to GTI TV and radio. He observed no change in the GTI coverage and "we (Council) were not 'blacked out'" (Tr. 13624–25).

60. Mr. May was a Councilmember from 1967 to 1975 (Tr. 13470–71). He noticed no change in his coverage—or any absence of coverage—before, during or after the time of the CATV issue (Tr. 13505–06).

61. Mr. Anas was a Councilmember from 1965 until 1975 (Tr. 13228–29). He stated that GTI on both radio and TV gave good service to Lansing. After he became aware of Mr. Moore's blackout charges against GTI, he checked to see if GTI was, in fact, deleting the points of view of Councilmember Moore but he saw no evidence to support Mr. Moore's view (Tr. 13232–33).

62. Ms. Belen has been a Councilmember since 1965 (Tr. 12684–85). It was her view that over the years GTI gave fair coverage to the Council, including Mr. Moore (Tr. 13732).

63. Mr. Perrin was a Councilmember from 1961 to 1969 (Tr. 13045). As a politician he did have occasional complaints about a given news story on WJIM, and, on these occasions he communicated the nature of his complaint to Mr. H. F. Gross. However, this was a typical procedure he followed with all news media (Tr. 13065).

64. Mr. Smith was a Councilmember from 1965 to 1969 (Tr. 12926) He did not notice any change in the regularity of reporting Council affairs by GTI during his term of office. Further, he gave no credence to Mr. Moore's complaints against GTI, because he observed that all Councilmembers, including Mr. Moore, were being covered by GTI (Tr. 12963–65 and 12970).

65. Judge Cavanagh testified in the proceeding and he was alert to the CATV issue because of his duties as City Attorney. He observed no change in suppression or variation in Councilmembers by GTI during the time of the CATV issue (Tr. 13285).

66. Mr. Murningham was the Mayor of Lansing from 1965 until 1969 (Tr. 12849). As such, he watched the coverage provided by GTI radio and TV to City Hall (Tr. 12888–91). There was coverage of routine and special events and there was no change of City Hall or the Council during his term of office (Tr. 12888–90).

Coverage of City Council Based on Partial Documents Available at GTI

67. It appears that to the extent GTI is alleged to have blacked out City Councilmembers during the CATV application period, such blackouts, if

any, were directed at Messrs. Adado, Ferguson, May and Moore. GTI did produce some incomplete film log entries for the years 1969 and 1970. Such information for periods prior to 1969 was not available except by happenstance. In addition, it will be recalled that GTI employees, Bate, Such and Jones, also recalled some GTI TV coverage of Mr. Moore during the 1969–70 time period (Tr. 2912, 2823–24, 10546–47, 12009 and 6395). Much of this sketchy information appears in GTI film log entries and thus it is unknown if there may have been additional news coverage on TV that did not use film or radio coverage. GTI did put into evidence such documents as were still in existence on the GTI coverage of the four Councilmembers (GTI Exhibit 3). Not all coverage is news coverage of the four Councilmembers, but, 37 incidents of various types of coverage are shown. A sampling of these 37 entries is as follows:

January 14, 1968 —PSA[19] announcement regarding Councilmember Roger May to be guest speaker at North Side Commercial Club.

June 12, 1969 —Councilmember Roger May confirms GTI covered his views on parking ramp problems—construction and design. His memory was refreshed after viewing a video tape recording of this GTI coverage of him (Tr. 13741–45).

Undated 1969 —Councilmember Louis Adado recalled he was covered on GTI TV on the Metro Bus issue after viewing GTI video tape recording (Tr. 14833–38).

December 8, 1969 —Councilmember Joel Ferguson recalls giving views about Purchasing Agent after he viewed a GTI video tape recording (Tr. 13592–603).

January 13, 1970 —Councilmember May recalls that GTI gave him TV coverage on the Building Authority after viewing GTI video tape recordings (Tr. 13471–75).

May 14, 1970 —Louis Adado and Milliken on Capitol Security. Adado viewed the GTI video tape recording of this TV coverage and recalled the event (Tr. 14833–38).

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[19] Public Service Announcement.

July 2, 1970 —Councilmember Ferguson recalls GTI TV coverage of him on manpower appropriation on viewing GTI video tape recording.

September 30, 1970 —Councilmember Adado recalls GTI coverage of him on Diamond Reo after viewing GTI video tape recording.

68. There also was documented in GTI Exhibit 2 some 40 instances of GTI radio and TV coverage of a public affairs nature which are based on some fragmentary GTI records starting in 1968. A sampling of these events is as follows:

September 4, 1968 —Interview 1240[20], Councilmember Adado on the grape issue.

April 24, 1969 —Interview 1240 Councilmember May on crime in Lansing.

September, 1969 —Interview 1240 Councilmember May on the Jolly Cedar Crisis.

December 15, 1970 —Councilmember Ferguson interviewed (radio) on Council's inability to override veto of Model Cities' contract for Westside News Academy.

March 16, 1971 —Councilmember May interviewed (radio) on ordinances acted upon by City Council.

May 2, 1972 —Councilmember Ferguson interviewed on GTI radio on Model Cities Liaison and third year action plan.

January 24, 1973 —Councilmember May interviewed on radio on the possiblity of a City-County Complex.

May 31, 1973 —Councilmember Moore interviewed on radio on trash pickup.

Undated —Councilmember Ferguson interviewed on the Black Dialogue (a GTI TV program) on a survey of Black problems in the area and employment.

In addition placed into evidence as its GTI Exhibit 1, a summary of 292 news scripts of stories involving Councilmen Adado, Ferguson, May and

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[20] This is a regular GTI AM radio program WJIM(AM) operates on a frequency of 1240 kHz.

Moore during the period 1971 to the cut-off date for hearing purposes of September, 1973. The 292 news stories break down into 112 TV stories and 180 radio stories. A sampling of the stories during this period restricted to coverage of Councilmember Moore is as follows:

January, 1971 —Councilmember Moore mentioned on radio in connection with the Lansing City Council approval of the Park Director's application to HUD for mini-parks in the Model Cities area.

April, 1971 —GTI radio and TV covered that the City Council has elected Mr. Moore as Mayor Pro Tem.

May, 1971 —GTI TV interview with Councilman Moore on the City budget.

June, 1971 —GTI radio coverage of Lansing City Council meeting on mass transit which mentions Councilmember Moore.

July, 1971 —Councilmember Moore responds on GTI (TV and radio) to conflict of interest charges against him regarding CATV holding.

August, 1971 —GTI radio coverage of the Lansing City Council meeting on the Federal Emergency Employment Act which mentions Councilmember Moore.

December, 1971 —GTI TV and radio coverage of disagreement between Councilmember Moore and City Attorney Hornback.

January, 1972 —GTI radio interview with Councilmember Moore on the revocation of the Paradise Theater License.

February, 1972 —GTI TV story on the resignation of City Attorney Hornback which mentioned Councilmember Moore.

March, 1972 —GTI radio interview with Councilmember Moore on Council's inability to override Mayor Graves' veto of a restaurant license for the Gandy Dancer.

April, 1972 —GTI TV story on Council's election of Councilmember May to succeed Councilmember Moore as Mayor Pro Tem.

July, 1972 —GTI TV interview with Councilmember Moore on the Lansing Bicentennial Park.

October, 1972 —GTI TV story on the ability of the Council to override the Mayor's veto of three Model Cities' contracts. Story mentioned Councilmember Moore.

January, 1973 —GTI radio coverage of Councilmember Moore's proposal for new lights in Lansing's Reutter Park.

February, 1973 —GTI radio coverage of Councilmember Moore's criticism of Lansing's Bicentennial Director Kurt Haynes.

April, 1973 —GTI radio and TV coverage of City Council action to find a new land-fill site which mentions Councilmember Moore.

May, 1973 —GTI radio coverage of special Council meeting to pass the Model Cities fourth year action plan. Councilmember Moore is mentioned.

June, 1973 —GTI radio interview with Councilmember Moore concerning Council's consideration of increased water and sewer rates.

July, 1973 —GTI radio interview with Councilmember Moore concerning Council resolution that Councilmembers sign newspaper announcements.

August, 1973 —GTI radio and TV coverage of Council primary elections in which Councilmember Moore is mentioned.

September, 1973 —GTI radio interview with Councilmember Moore concerning Detroit *Free Press* article on GTI blacklisting certain Councilmembers.

Coverage of Hoffa and Scholle

69. This relates to alleged news suppression of Messrs. Hoffa and Scholle by GTI during the period Mr. Richard Evans was News Director from June, 1962 to August, 1963. This charge against GTI is based upon the testimony of Richard Evans that he received direct orders from Harold Gross to suppress news of August Scholle, then President of the Michigan AFL-CIO and Mr. James Hoffa, then President of the Teams-

ters Union. Neither Messrs. Scholle nor Hoffa were witnesses in this proceeding as both were deceased at that time.[21] Fellow employees in the GTI news room believed Mr. Evans to be unhappy during his brief period with GTI (Tr. 9575–79 and 12385–86). Mr. Evans' duties with GTI were to supervise the radio and TV news staff and make assignments. In addition, he anchored the 6 and 11 p.m. TV newscasts (Tr. 4167, 4182, 4091–4093).

70. Mr. Evans during his deposition, stated that on February 15, 1963, Mr. August Scholle delivered the keynote address of the Bicentennial Legislative Conference of the Michigan State AFL-CIO at the Lansing Civic Center (ACLU Exhibit 244). Also during this same time period, GTI broadcast a story which included a speech by Gus Scholle (Tr. 4140 and 4147). According to Mr. Evans he covered the Gus Scholle story himself and William La Crosse was the cameraman on this occasion (Tr. 4160). Evans had also given a statement to this Commission about the filming of the story (Tr. 4146). Mr. La Crosse does not remember covering Scholle with Evans and cannot specifically recall covering Gus Scholle (Tr. 9583). Further, according to Mr. Evans, the Gus Scholle story was aired over GTI after which Mr. H. F. Gross told him not to do any more stories about Scholle at any time (Tr. 4094–97). Also, according to Mr. Evans, H. F. Gross referred to Mr. Scholle as an S.O.B. (Tr. 4097). Next, about one month later, Mr. Evans knew that Mr. James Hoffa was to give a speech at the Jack Tar Hotel in Lansing (ACLU Exhibit 244). According to Mr. Evans, he recalled the recent H. F. Gross statement about coverage of Gus Scholle and accordingly Evans stated he went to H. F. Gross about coverage of what he regarded as an important event regarding a labor leader. Mr. H. F. Gross told Mr. Evans, according to Mr. Evans, that Mr. Hoffa was not to be on "his television station" (Tr. 4098–99). Mr. Evans then returned to the news room where he received a phone call from CBS or NBC[22] in New York and Mr. Evans related that the network could not cover the Hoffa speech with its own network news team and could GTI provide coverage for the network. Continuing with Mr. Evans' account of this GTI blackout of the two labor leaders, Mr. Evans then returned to H. F. Gross and advised that the network wanted GTI to provide coverage of the Hoffa speech. H. F. Gross again is reported by Mr. Evans to have said no an then Evans called the New York-based network and told them GTI would not cover the speech for the network and the Hoffa speech was not covered by GTI. According to Mr. Evans, he related this entire incident to

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[21] Mr. August Scholle was President of the Michigan AFL-CIO with offices in Detroit (Tr. 15257) until his death in 1972 (ACLU Exhibit 244). Mr. James Hoffa was President of the Teamsters Union which is headquartered in Washington, D.C. (ACLU Exhibit 244). Mr. Hoffa's where abouts were unknown during this proceeding and the press consistently carried various versions of his violent death.

[22] During this period, WJIM-TV had affiliation agreements with both NBC and CBS.

all the then members of the GTI news department and thus the incident was "common knowledge" in the news room (Tr. 4098, 4180 and 4197).

71. Mr. H. F. Gross denied that he directed any blackout of James Hoffa or August Scholle (Tr. 15001). To further rebut Mr. Evans' allegations, GTI called as witness all available fellow news room employees during the Evans period. None of these witnesses are now employed by GTI and include Messrs. La Crosse, Haas, Machtel and Warner.

72. Mr. La Crosse said that during the Evans period, he was the only news photographer on the GTI staff (Tr. 9583–84). Mr. La Crosse can recall no news room discussion on Messrs. Scholle and Hoffa or of the rejection of any request for a network feed (Tr. 9567–68, 9566–67 and 9579–80). Actually, Mr. La Crosse was a co-employee with Mr. Evans for six years at another TV station after termination of their employment with GTI and during the six-year period and until the hearing, Evans never mentioned the alleged GTI blackout of Scholle or Hoffa (Tr. 9579–82). Rather, Mr. La Crosse recalls that the news room atmosphere is contrary to that depicted by Mr. Evans, i.e., news was to be covered on an important basis (Tr. 9609). Mr. La Crosse remembers that the occasions when he did talk to H. F. Gross about his ready access to various government departments, Mr. H. F. Gross approved of this type of news coverage (Tr. 9590). As for the Hoffa speech at the Jack Tar Hotel, Mr. La Crosse remembers covering the speech with another reporter from WJIM-TV. Mr. La Crosse used sound film and covered Mr. Hoffa during the actual speech (Tr. 9549, 9552–53, 9611, 9613, 9602, and 9604). Mr. La Crosse was not criticized by the news reporter, Mr. Evans or Mr. H. F. Gross for his sound film[23] coverage of the story (Tr. 9588).

73. Mr. Dwayne Haas was in the GTI news department from December, 1961 or January, 1962 until June, 1964 and covered the period of Evans' employment with GTI (Tr. 12366–67). Mr. Haas said there never were any GTI news room discussions by Mr. Evans or anyone else about either the coverage of Mr. Scholle or Mr. Hoffa or, the GTI rejection of any network request for a network feed (Tr. 12372, 12374 and 12376).

74. Mr. Machtel was employed in the GTI news department from December, 1962 until February, 1966 which would include the last seven or eight months of Mr. Evans' 13-month tenure (Tr. 14355). Mr. Machtel testified that he never heard any news room discussion by Mr. Evans or anyone else about the coverage of Mr. Hoffa or Mr. Scholle or any rejection of a network feed request (Tr. 14357–59).

75. Mr. Charles Warner was employed from March, 1963 until April, 1964 as a news cameraman (Tr. 12826–27). He stated the only other GTI cameraman was Mr. La Crosse. Mr. Warner never heard any news room

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[23] The WJIM-TV budget for sound film was of continuing concern to employees in the news department.

discussions about coverage of Mr. Hoffa or Mr. Scholle or any rejection of a network feed (Tr. 12852–53).

76. Similar testimony was given by other fellow employees of Mr. Evans, namely Mr. Brian Halter, Radio Program Director who supervised daily and weekly radio public affairs programs by GTI (Tr. 13133–36, 13150–52, 11159–60); Mr. Timothy Culver, a cameraman for Mr. Evans' 6 and 11 p.m. news programs (Tr. 9487–90, 9467, 9482–83 and 9497–99); Mr. Dennis Zartman, who shared the news room quarters with Mr. Evans; and Mr. Boone, a radio air personality for about one year before moving to the radio news department at about the time of Mr. Evans' departure (Tr. 9877–78, 9882–85, 9617, 9874–75, 9879 and 9952). Mr. Harold Gross testified that not only did he not direct any blackout of Mr. Hoffa or Mr. Scholle, but that he had constantly covered labor leaders going back to his start in broadcasting (1934) and the policy never changed (Tr. 1575–76, 15011, 15003 and 1506–08).

77. Mr. James Gross, the son of Harold Gross, said he had never heard H. F. Gross mention in any way coverage of Mr. Hoffa or Mr. Scholle or any rejection of a network feed. Mr. James Gross stated he knew most of the members of the news staff during Mr. Evans' tenure, and, he never heard them talk about such matters (Tr. 14528–31). Mr. James Gross did recall seeing Mr. Scholle on a GTI panel program telecast during the period of Mr. Evans' employment (Tr. 14534–35). With respect to the alleged GTI rejection of a network feed on the Hoffa speech, Mr. Gross first stated that such a request is made only where a story breaks in a market where the network has no correspondent of its own (Tr. 15008). It was Harold Gross' testimony that it "just does not make sense for any station to turn down a request for a network feed" (Tr. 15011) because this gives the local station (WJIM-TV in this case) nationwide coverage for its call letters, story and reporter (Tr. 15008–09). Mr. James Gross agreed with his father's reaction to GTI turning down a network feed. He said any such action on the part of GTI would be "ludicrous" because it is a "feather in every station's cap" (Tr. 14533–34). Mr. Harold Gross said the first time he ever heard the charge of the GTI rejection of a network feed was not until it was advanced at this proceeding (Tr. 15011). Since GTI had TV affiliation agreements with NBC and CBS at this time, the networks were contacted and both said they had no record of any such request to GTI. Further, CBS said it would not have made such a request to GTI as its own midwest bureau would have been able to cover the story (GTI Exhibits 243 and 244 and Tr. 15014). The proposed findings of the Bureau find that Mr. Evans' charges are not corroborated and thus Mr. Evans' charge that H. F. Gross directed him to suppress Mr. Hoffa and Mr. Scholle is rejected. The ACLU recognizes that Mr. Scholle was covered on GTI, but there was little or no coverage of Mr. Hoffa during the early 1960's. ACLU also suggests that the sound film Mr. La Crosse did of Mr.

Hoffa may have occurred prior to the alleged H. F. Gross blackout order and Mr. H. F. Gross may have been out of town and did not see the coverage of Hoffa that Mr. La Crosse testified about. (See Tr. 9534–35, 9549–50k, 9611, 9613, 9552, 9590, 9551, 9595 and ACLU Exhibit 244.)

Coverage of Bowerman and Williams

78. Mr. S. Donald Potter was the News Director for GTI TV and radio for an approximate three-year period from November, 1958 to October 1961. Thus, the evidence in this area can be almost 20 years old and, as might be expected, memories were not as sharp as in the case of more recent events covered in this proceeding. The charge dealt with here is the alleged news suppression of Willard I. Bowerman, who was then a state legislator, and former Governor G. Mennen Williams. In addition to the age of the events in this testimony, there is also a question of the usability of Mr. Potter's testimony. The Bureau does not press the charges of news suppression in this instance because of the credibility question and the ACLU deals more in the area of Potter's testimony insofar as it alleges that GTI, during the Potter era, suppressed news to favor certain advertisers, considered *infra.*

79. It is Mr. Potter's testimony that he had a conversation with Harold Gross in 1958 and again in 1959 to the effect that Mr. Bowerman had introduced a bill in the state legislature which Harold Gross believed could be damaging to the interest of GTI. Thus, Mr. Gross is said to have directed Mr. Potter that coverage of Mr. Bowerman should be held to a minimum or he should not be portrayed in a favorable light (Tr. 4333–34). As a result, Mr. Potter said he gave Mr. Bowerman coverage of a "transcendental nature" (Tr. 4334). However, Mr. Potter recalled on cross-examination that GTI during his employment carried "some" news stories on Mr. Bowerman and did not carry "some" others. Mr. Potter could recall coverage of Mr. Bowerman's "Rubber Hammer" bill.[24] Mr. Potter did recall a number of GTI news stories on Mr. Bowerman covering his mayoralty campaign. Also, during this period, Mr. Potter recalls a GTI editorial which was prompted by a GTI belief that Mr. Bowerman was receiving unfair coverage in the local print media and that this GTI editorial served to benefit Mr. Bowerman's candidacy (Tr. 4335–36 and 4344–45). After Mr. Bowerman was elected as the Mayor of Lansing, Mr. Potter could recall his coverage of Mr. Bowerman on GTI on matters that Mr. Potter considered controversial and quite newsworthy (Tr. 4345 and 4395–96). Mr. Potter could recall no criticism, restraint or suggestions from Mr. Harold Gross of such coverage (Tr. 4395). Mr. Potter did recall

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[24] This was a bill to require the reduction of noise levels in the vicinity of drop forges. This particular bill would resolve noise problems of persons living in the immediate vicinity of the Lindell Drop Force (Tr. 4396–98).

that Mr. Harold Gross told him several times that he was overcovering the state legislature (Tr. 4410). This testimony of Potter is consistent with other evidence in this proceeding that Mr. Harold Gross did have a general news policy or philosophy of GTI which was to avoid undue reliance on political news sources of the State Capitol. Rather, he encouraged reporters to seek out local news stories which Mr. Harold Gross believed would provide a more balanced GTI news service.

80. The difficulty with Mr. Potter's credibility is that he stated that he had attended two law schools and had graduated from the University of Minnesota Law School and was a member of the bar in that state. These claims had originated during Mr. Potter's campaign to be elected as a Lansing City Councilman (Tr. 4351). Such facts were included in a release in which he announced his candidacy for this public office and which release was the basis for print media stories about him. Mr. Potter insisted that he was registererd, paid fees, took all the required courses for a law degree and took examinations for such courses at both Wayne State University and the University of Minnesota and did indeed receive the LL.B. degree (Tr. 4868–70 and 4418–19 and 4429). The records were checked by an appropriate official of both universities and such records showed that he did not attend either institution and received no law degree from the University of Minnesota (GTI Exhibit 194, pp. 4–6). Further, the records of the Minnesota Bar Association reflect that he was never admitted to practice law in Minnesota and he never corrected local print media stories to the contrary (Tr. 4379–80 and GTI Exhibit 194, p. 3).

81. With the hearing record in this state, the Presiding Officer announced that the Potter testimony could be given no weight unless Mr. Potter either could be rehabilitated as to his claims of completion of the required studies for the LL.B. degree and Minnesota Bar membership, or, the parties seeking to rely on Mr. Potter's testimony could produce independent testimony through other witnesses or documentation which would support Mr. Potter's claim of GTI news blackout, distortion or suppression (Tr. 14808). Such testimony or documentation was never presented in this hearing record. One additional factor is involved in the Potter testimony. It appears his departure from GTI was less than amicable as far as Mr. Potter was concerned. It appears that Mr. Potter and two other GTI employees were seeking to purchase a radio station in Florida and they advised GTI of their proposed resignation for this purpose. GTI then hired replacements for the three persons, but permitted Mr. Potter and the two other employees to remain on the GTI payroll under the belief that the purchase agreement for the Florida station would soon be approved by the Commission. When it appeared that the FCC approval was not forthcoming and Mr. Potter was unable to supply a date when the FCC approval would be finalized, GTI terminated the

employment of Mr. Potter and the two other employees. Mr. Potter and the two other GTI employees then applied for unemployment benefits. GTI opposed the granting of such benefits and the State Bureau upheld the GTI position. Mr. Potter admits that he "was quite put out about the whole thing" (Tr. 15018–20. Thus, Mr. Potter's credibility must be viewed in the light of these events and the facts of record as developed through other witnesses.

82. Mr. Harold Gross testified on this matter and he denied giving such instructions to Mr. Potter and stated that the first he heard of this matter was during this proceeding (Tr. 1580–81 and 14990). Mr. Gross stated that prior to becoming a broadcaster, he was an advertising salesman for the *Capitol News*, a Lansing newspaper which was then a competitor of the Lansing *State Journal*. Mr. Bowerman's father was then one of the leading real estate dealers in Lansing and was a business client of Mr. Harold Gross (Tr. 14987–88). Mr. Gross further stated that there was no change in the coverage provided to the State Capitol and the Mayor of Lansing since 1934 and this included the period Mr. Bowerman was a member of the State Legislature and Mayor of the City (Tr. 14981–82).

83. Mr. Bowerman appeared as a witness and he stated generally that while he was in the State Legislature, during the Potter era and later during the mayoralty race and his term of office as the Mayor, he had no complaints about his coverage during these years and, in fact, felt the coverage was "good" (Tr. 14342–44). Also, since Mr. Potter stated the GTI blackout of Mr. Bowerman started with some bill Mr. Bowerman introduced in the legislature that would be unfavorable to the media, GTI researched the legislative history of bills and resolutions that were introduced by Mr. Bowerman during his eight-year term as a State legislator. In all there were 183 such bills and resolutions, the text of which were provided to Mr. Bowerman for his inspection (GTI Exhibit No. 193 and Tr. 11748a). Both Mr. Bowerman and Mr. Harold Gross examined this material and could find no bill or resolution having any effect on GTI specifically or the media generally (Tr. 14337–39, 1581–82 and 14988–89). Subsequent to Mr. Bowerman's term as a State Legislator, he ran for and was elected the Mayor of Lansing in April 1961. His opponent was then Mayor Ralph Crego (Tr. 14336–37 and 14505). During the campaign between Messrs. Crego and Bowerman for this office, Harold Gross testified that it became obvious that the local print media was favoring Mayor Crego. Thus, GTI ran an editorial that dealt with the alleged undercoverage of Candidate Bowerman and the overcoverage of Mayor Crego (Tr. 14980–81).

84. Mr. James Gross testified and he recalled some of the details of the 1961 campaign for Mayor of Lansing. It appears that Mayor Crego had held office since 1952 and his campaign for re-election dealt with the need of Lansing for a good credit rating. Mr. Bowerman's campaign was based

on the need to advance the growth and development of downtown Lansing. The GTI editorial, according to James Gross, stated it was more important to develop downtown Lansing than maintaining the City's credit rating which was inhibiting the downtown growth. The GTI editorial concluded that perhaps it was time for a change (Tr. 14509–10 and 14513). In addition, Mr. James Gross said he was the cameraman or audio engineer on the 6 and 11 P.M. GTI news during most of Mr. Potter's tenure and thus Messrs. Potter and James Gross were in daily contact (Tr. 14450–51). Mr. James Grosss could recall no discussion by Mr. Potter or any of the then-newsroom staff about news coverage of Mr. Bowerman. However, there was discussion in the GTI newsroom that the GTI editorial had been instrumental in Mr. Bowerman's victory (Tr. 14503 and 14510–11). Also, Mr. James Gross' recall of personal and business contacts with his father, Harold Gross, during the Potter era did not include any criticism of Mr. Bowerman or the bill that he had introduced (Tr. 14517).

85. GTI also produced as witnesses other GTI newsroom employees during all or part of the Potter era. Their testimony was to the effect that during Mr. Bowerman's service as a public official, that he never heard anything about GTI suppressing or distorting the coverage of Mr. Bowerman. See testimony of Mr. Brian Halter (Tr. 13158 and 13160); Mr. William A. La Cross, Jr. (Tr. 9567–68 and 9534, 39); Mr. Dwayne Haas (Tr. 12382 and 12366–67); Mr. Richard Evans (Tr. 4105–06 and 4092); Mr. William Dansby (Tr. 9624–30, 9743 and 9617); Mr. Marvin Boone (Tr. 9882–85, 9869 and 9952); Mr. Timothy Culver (Tr. 9493–94 and 9467–68) and Mr. Dennis Zartman (Tr. 11900–01, 11844 and 11918–19).

86. Some limited and fragmentary documentary evidence was also introduced in this proceeding as to GTI coverage of Mr. Bowerman. A sampling of this evidence is as follows:

July 17, 1961	—GTI newscript (11 P.M.) covered a City Council meeting and mentioned Mayor Bowerman and Councilmen Perrin, Milks and City Attorney Warren.
December 8, 1963	—GTI program City Hall Comments. Bowerman discusses a proposed Economic Progress Director, tax outlook and a proposal that would permit expansion of the Oldsmobile factory.
January 20, 1964	—GTI program City Hall Comments. Mr. Bowerman discusses the proposed budget for 1964–65 and the need for tax reassessment to achieve tax equity.
Undated	—Dan Potter interviews candidates for Mayor, including Mr. Bowerman.

(GTI Exhibit 27, pp. 1 and 2).

The record also shows that GTI, during 1963–64, formed a citizens advisory committee and Mr. Bowerman was a charter member at the invitation of Harold Gross (GTI Exhibit 27, pp. 18–19). Mr. Bowerman admitted that he had little independent recollection of GTI programming involving him since it occurred so many years ago, but, he did recall that GTI carried a program every Monday night concerning City Council and that he participated in this program on a regular basis (Tr. 14346).

87. Mr. G. Mennen Williams was Governor of Michigan from 1948 until 1960 (Tr. 14968–69). Thereafter, Mr. Williams became Assistant Secretary of State for African Affairs (Tr. 4338–39 and Statement of Council (Tr. 1576). He was United States Ambassador to the Phillipines and since 1971, an Associate Justice of the Michigan State Supreme Court (GTI Exhibit 165, p. 4). It is Mr. Potter's testimony that he had a discussion with Harold Gross concerning the fiscal situation in Michigan and that Mr. Gross was critical of Governor Williams' proposal for a personal income tax and said to Mr. Potter words to the effect that "He's a hell of a poor Governor. We ought not to do him any favors." (Tr. 4339). On cross examination, Mr. Potter stated that he regarded his conversation with Harold Gross relative to Mr. Williams "only in a general way" (Tr. 4404), and that he never suppressed news or public affairs program coverage of Governor Williams as a result of his conversation with Harold Gross. In fact, Mr. Potter recognizes that Governor Williams appeared often on GTI facilities and Mr. Potter described Governor Williams' final appearance as Governor on the facilities of GTI (Tr. 4340).

88. Mr. Potter, in addition to the conversation with Harold Gross, *supra*, also recalled a memorandum he received from Harold Gross that followed a TV interview Mr. Potter had with Governor Williams. The memo was near the end of Governor Williams' term in November or December 1960 (Tr. 4340 and 4408–09). Here again, because of the passage of time, Mr. Potter's recall of the memo was vague but he believed the memo had to do with the format Mr. Potter employed and Mr. Harold Gross' memorandum characterized the program as one of Governor Williams' better appearances (Tr. 4340–41, 4405 and 4408–09).

89. Mr. Harold Gross denies that he made any derogatory statement, either generally or directed towards news suppression, to Mr. Potter about Governor Williams and that he never heard of such a story attributed to him until this proceeding (Tr. 14986–87). Mr. Harold Gross said the GTI coverage of State Governors had continued for his 44 years as a broadcaster and there was no change during the term of Governor Williams (Tr. 14975–76). Mr. Harold Gross, based on his personal recollection, stated that GTI did afford Governor Williams regular coverage throughout his 12-year term as Governor (Tr. 14969 and 14973–76).

90. Mr. James Gross said that Governor Williams and his father knew each other on a "first-name basis" and that Mr. Harold Gross had offered

Governor Williams the use of his Northport, Michigan cottage (Tr. 14502–03 and 14459). Mr. James Gross also recalls Governor Williams visiting the Country House[25] during Mr. Potter's era. Mr. James Gross recalls that the state of the economy in Michigan was a subject on everyone's mind. In fact, there were occasions when the State was unable to meet its payrolls and these matters were discussed with his father, Harold Gross (Tr. 14459–60). Mr. James Gross recalls that his father was critical of this economic disarray, which criticism was directed against the State Government generally and he never placed any responsibility for it on Governor Williams (Tr. 14460–61). As with Mr. James Gross' recall concerning Mr. Bowerman, he recalls that Governor Williams was on the air quite a bit during the Potter era and at that time, he was in daily contact with Mr. Potter as he worked on the 6 P.M. and 11 P.M. newscasts. There was no comment by Mr. Potter or other newsroom staff about coverage provided by GTI to Governor Wiliams (Tr. 14457–58). In addition, Mr. James Gross recalls that Governor Williams' wife occasionally was covered on GTI news and she appeared on the Martha Dixon Show "a good number of times" (Tr. 14467). Ms Martha Dixon also was a witness and stated that Mr. Harold Gross never criticized her for the numerous appearances of Mrs. Williams on her show. It should be noted that all testimony relative to alleged GTI blackout of Governor Williams is based on the memory of the various witnesses. The memo which Mr. Potter stated he received was not located in the GTI files and no other party to this proceeding was able to produce a copy.

91. Again, as with Mr. Bowerman, GTI produced as witness GTI former employees who served in the GTI news operation with Mr. Potter. None of these employees had heard anything about GTI suppression or distortion of news about Governor Williams (See Halter testimony-Tr. 13159–60; La Crosse, Jr. testimony—Tr. 9567–68; Culver testimony-Tr. 9493–94; Zartman testimony Tr. 11900–01 and Haas testimony-Tr. 12382). Likewise, the GTI News Directors who followed the Potter era (post 1961) testified that they had not heard anything about news suppression of Governor Williams during the Potter era. See Evans testimony (Tr. 4105–06); Dansby testimony (Tr. 9617); Boone testimony (Tr. 9952); Wright testimony (Tr. 10589–90, 10595–97, 10605–06, 10620–22, 10634–35); McCall testimony (Tr. 2686); Wilmott testimony (Tr. 12547–48); Morgan testimony (Tr. 10212–15, 10256, 10286, 10207, 10242 and 10245); Bate testimony (Tr. 2809); Such testimony (Tr. 11811–12a, 10498, 10539 and 11795a–96); Lawrence testimony (Tr. 7662, 7506, 7519, 7513–14, 7506 and 7519); Lancour testimony (Tr. 10091, 100065–66 and 10081); Blaha testimony (Tr. 12268–69, 10065–66 and 10081); Billman testimony (Tr. 10890–91

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[25] This is a term often used to refer to the building which houses the GTI production and operation facilities.

and 10824; and Ray testimony (Tr. 3589–91).[26] It should be noted that while neither the Bureau nor ACLU has pressed these charges in their respective proposed findings of fact and conclusions of law, ACLU does seek to use the Potter era in support of its claim that GTI would distort news to favor its private interests, namely advertising accounts, considered *infra*. Thus, the Bowerman-Williams episodes alleged to have taken place during the Potter era are included in these findings in order to evaluate the ACLU requested finding that GTI did distort news for either favored advertisers, or, concerns which did not advertise over GTI.

The Harrison-Chamberlain Press Releases

92. This part of the record concerns the GTI coverage, or lack of it, during the 1968 race for a seat in the U.S. Congress, i.e., Representative for the Sixth Congressional District of Michigan. The candidates were the Honorable Charles E. Chamberlain (Republican) who had served as the representative for the Sixth District, which includes Lansing, for nine terms from 1956 to his retirement in 1974 (Bureau Exhibit 83). The Democratic candidate for the U.S. Representative for the Sixth District in 1968 was Mr. James A. Harrison.

93. As is often the case in this hearing record, the Bureau and the ACLU differ as to GTI's news coverage of events. Here, the Bureau finds that GTI coverage of Mr. Harrison was a valid news judgment factor. The ACLU urges in its findings that the GTI coverage, or non-coverage of Mr. Harrison is not a news judgment but rather the use of GTI of a very restrictive policy in statements of politicians.

94. Congressman Chamberlain's deposition was entered into the record of this case (Tr. 23726–29) and his campaign strategy appeared to involve his keeping a "low profile" to minimize exposure of the opposing candidate. Thus, the Congressman did not seek broadcast coverage unless "it was real hard news." Rather, he purchased spots or paid program time for the material he wished to broadcast (Bureau Exhibit 83, pp. 12 and 19). It appears this was a common strategy for an incumbent officeholder that was based on advice of the Republican Congressional Committee (Bureau Exhibit 83, pp. 11 and 12). Congressman Chamberlain never discussed this strategy with Mr. Harold Gross (Bureau Exhibit 83, p. 30) and Mr. Harold Gross did not have a personal or social relationship with Congressman Chamberlain (Bureau Exhibit 83, p. 32). Mr. Harold Gross had once made a small personal monetary contribution to one of Mr. Chamberlain's

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[26] This includes all news directors from the Potter era to the cut-off date of this proceeding except Mr. Jon Esther who held this position for only about three weeks in December, 1968. His memory was understandably either erroneous or vague (Tr. 3124, 3130, 3135–37, 3139–43 and 3164–65). While he testified as to dealing with Mr. James Gross, he was unable to recognize him in the hearing room (Tr. 3172).

earlier campaigns which caused the Congressman to wonder if he had done something wrong as far as GTI or Harold Gross were concerned since there never were any subsequent contributions (Bureau Exhibit 83, pp. 32–33).

95. Mr. Harrison, during the pre-Democratic party primary period (approximately June 14 to August 5), issued about eight press releases. Mr. Harrison recalls that some of the pre-primary press releases were covered on WJIM radio or WJIM-TV (Tr. 3254–55 and 3263–64). However, Mr. Harrison recalls no coverage of him during the general election campaign, but admits his recall of this approximate two-month period is now vague (Tr. 3332–40). Likewise, GTI had retained in its files only a few records going back to this 1968 period. Mr. Harrison was not unknown to GTI as it had an ongoing day-to-day relationship with him from 1960 to 1965. During those years, Mr. Harrison hosted a fifteen-minute program over GTI entitled, "Rural Viewpoint" that was telecast by WJIM-TV on a daily basis, back-to-back with the noon news (Tr. 3294–95). During those years, Mr. Harrison was the "extension television specialist" at Michigan State University (Tr. 3294). For a time, Mr. James Gross worked as a cameraman on this program (Tr. 14469–71) It was Mr. Harrison's position at the hearing that between the GTI policy on news coverage of political candidates and Mr. Chamberlain's low profile strategy, it effectively operated to black him out on GTI facilities and his press releases which were sent to all local media, and he was not covered by GTI. The GTI policy on coverage of political candidates as stated in its "Operations Manual" as revised in 1969:[27]

> The cardinal objective of WJIM in regard to all locally originated newscasts is to present a complete, objective and totally unbiased report of the news. Any editorial comment or bias in the presentation of news is strictly forbidden.
>
> In this regard, special care must be exercised in the preparation of newscasts during political campaigns. While newscasts and bona fide news discussions and news interview programs are exempt from "equal time" provisions, it is the express policy of the WJIM Stations to afford reasonably *equal* news coverage to *all* major candidates for public office. Day by day care *must* be exercised to see that such balance is maintained. (Broadcast Bureau Exhibit 64 at 2).

It appears that Mr. Harrison based his claimed lack of GTI coverage on his personal monitoring efforts which consisted of watching and listening to as many newscasts as he could, particularly in the Lansing area. This would include flipping back and forth between nightly TV newscasts on WJIM-TV and other TV stations and monitoring area radio stations in a similar fashion.[28] However, some records still remained in the GTI files which give some indication of Mr. Harrison's coverage on GTI as follows:

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[27] While this is a 1969 revision of the "Operations Manual", Mr. Harold Gross stated that this policy was in existence since 1960 (Tr. 1617). Thus, while the above quoted part of the manual is after the election, it nevertheless applied in 1968 during the Chamberlain-Harrison campaign.

(a) An audio news report featuring Mr. Harrison at the Democratic National Convention filed by GTI reporter Walter Sorg (Tr. 4283–85, and 4230–31).

(b) A radio interview on the GTI public affairs program "Interview 1240" by reporter Andrew Such, relative to Mr. Harrison's endorsement of the Presidential Candidacy of Mr. Hubert H. Humphrey (GTI Exhibit 37, p. 2 and Tr. 11826a and 11785–85a).

(c) Mr. Such made contact with Mr. Harrison's campaign "a couple times a week" and attended his press conferences (Tr. 10474, and 10827(a)). Mr. Such also conducted additional interviews, but cannot recall the specifics (Tr. 11826(a) and 10474–75).

(d) There was a GTI television news story on Mr. Harrison's endorsement of Mr. Humphrey's candidacy (Tr. 6368–69, 6375 and 7040).

(e) Mr. Kowal, a GTI news photographer, recalls a press conference with Mr. Harrison sometime in September (Tr. 3463 and 3469–70).

(f) A television news "feature" regarding Mr. Harrison which was aired prior to September 18 (Bureau Exhibit 13).

(g) Since Mr. James Gross had a prior close business relationship with Mr. Harrison, he followed the Harrison campaign and there were news stories on GTI-TV on Mr. Harrison, but he cannot now remember the details (Tr. 15496).

Mr. Chamberlain followed his low profile campaign strategy and purchased three five-minute programs and 16 commercial spots on WJIM-TV for the 1968 campaign. (GTI Exhibit 204). Mr. Harrison was the only witness who saw GTI coverage of Mr. Chamberlain. However, he could not recall if such coverage was during the general campaign and did not know if this occurred during a GTI news program or a paid political program (Tr. 3324–25, 3364 and 3388–89). Reporter Walter L. Sorg, Jr. made one unsuccessful effort to interview Mr. Chamberlain (Tr. 2211–42). Mr. Chamberlain had no knowledge or recall of his GTI coverage and Messrs. Harold Gross, Sorg, Kowal, Such, Morgan and Boon each testified that they cannot recall any coverage of Mr. Chamberlain during the 1968 congressional campaign (Tr. 1768, 4240, 3473–76, 10489, 10420–21 and 10038).

96. The GTI News Directors both testified that they had no recall of any news coverage of Mr. Chamberlain or Mr. Harrison during the 1968 campaign. Mr. Wilmott said it was part of his job to actually count the number of lines of news script devoted to each candidate. Mr. Morgan did not count the exact time given to each political candidate but he did keep track of the coverage "in his head" and undertook to give competing

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[28] It was, for this reason that the Bureau concluded that Mr. Harrison's monitoring efforts, standing alone, were insufficient to establish if GTI covered his news releases.

candidates "the same amount of time" (Tr. 10267). GTI news reporter Sorg said he recalled the GTI policy on political candidates and that policy required GTI to give as near equal coverage as was humanly possible down to the last second (Tr. 4232–33). Mr. Harrison made no complaint about his claimed lack of coverage to GTI or the FCC (Tr. 3341 and 3340–43) although Mr. Harrison had at least one experience with filing such a complaint with the FCC (Tr. 3296–98). Mr. Harrison stated that such a complaint during the campaign would not have provided any "fruitful publicity" (Tr. 3341–43).

97. Little in the way of hard evidence could be produced as to the GTI "blackout" of Mr. Harrison. It is clear that Mr. Harrison gave speeches, press releases (Tr. 3381–83) which were the subject of other media coverage. Mr. Harrison also recalls GTI coverage of Congressman Chamberlain and one particular video tape concerning Mr. Chamberlain's views on the mining of Haipong Harbor, service academy openings and the use of American parts by countries trading with North Vietnam. Mr. Harrison is not sure if these events occurred during the 1968 Congressional campaign, whether the coverage was local or network or a paid political broadcast.[29]

98. Mr. Beer said he heard rumors of GTI news suppression during the 1968 campaign. The campaign, i.e., after the primaries were over, lasted from the last week in August until November 5, 1968. Mr. Beer was not employed at GTI during this period of time (Tr. 13007). Mr. Beer characterized the rumors as "scuttlebutt" and does not know who he heard them from. He cannot state whom the rumors concerned and he never discussed the matter with Harold or James Gross (Tr. 13017–20 and 13077). Mr. Beer never received any instructions relative to coverage of Mr. Harrison and he never observed any instances of news suppression (Tr. 13020–23).

99. Mr. Andrew Such, a GTI news employee, does not recall coverage of Mr. Harrison by GTI (Tr. 10488–89), but he was never instructed to suppress such coverage and he has no knowledge of news suppression by GTI of Mr. Harrison (Tr. 10472 and 10479).

100. Mr. Sorg did attend the Democratic National Convention at Chicago and the first story he sent back was about Mr. Harrison and there were no further stories from Mr. Sorg used by GTI. However, this was not the result of a GTI blackout of Mr. Harrison. Rather, it was an inter-office mixup. It appears that Mr. Sorg had outlined a plan whereby he would attend the National Convention and then send out from the Convention

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[29] The ACLU cited in its proposed findings a number of activities of Mr. Harrison, at least some of which were covered by other media. Such evidence was permitted in the record to show that Mr. Harrison conducted an active campaign. However, such evidence could not be used for his coverage by the various competing media (Tr. 1332, 3889–90 and 3435).

reports to GTI and other media on a per report basis and Mr. Sorg was to be paid by GTI on a story-by-story basis. Mr. Tom Jones approved this proposal (Tr. 4226–27, 6325–26 and 7062–63). When Mr. Harold Gross heard about this, he became angry and said Mr. Jones did "not go through channels" to obtain authorization for the trip and Mr. Sorg's "moonlighting" for other stations while on the GTI payroll had to stop and ordered Mr. Sorg's reports to be discontinued (Tr. 1695, 6327 and 4230).

101. It appears that the ACLU theory of its case is the given Mr. Chamberlain's low key campaign and the GTI philosophy, as expressed in its manual, i.e., equal news coverage was to be given to all candidates on a day-by-day basis. Thus, if Mr. Chamberlain remained silent, it would automatically block coverage of Mr. Harrison. The implementation of this equal coverage policy was a matter of considerable controversy during the 1968 Congressional campaign. Mr. Harold Gross represents the most staunch application of the polciy, i.e., if a candidate's views are aired on a news program, the opposing candidate must be aired on the same program (Tr. 1609 and 1626).

102. Mr. Marvin Boon said under his interpretation of the GTI policy, that if a valid news story existed, it could not be covered unless essentially equal coverage was afforded to the opposing candidate. Walter Sorg said the equal coverage was to be interpreted as equal clock time (Tr. 4203–04 and 4241). Thus, since Mr. Chamberlain gave few, if any, interviews, this served to "blackout" Mr. Harrison.

103. Mr. Tom Jones, who wrote the policy statement as contained in the GTI manual, had a short talk with Gross about the one-for-one policy of covering both political candidates in the same news program. Mr. Jones told Mr. Gross that this was not his understanding of the law and newscasts were exempt from the equal time requirements. Mr. Harold Gross responded that the policy was consistent with what his lawyer told him (Tr. 6343). Mr. Jones had no further discussions with Mr. Harold Gross during the 1968 campaign (Tr. 6343). It appears that in spite of Mr. Harold Gross' one-for-one during the same program, there was still some coverage by GTI of Mr. Harrison that did not fit Mr. Harold Gross' policy under his interpretation. One other incident involved one of the regular meetings of GTI employees with Mr. Harold Gross. Just as one of these meetings was breaking up, Mr. Paul Kowal heard Mr. Harold Gross tell someone who was present at the meeting that Mr. Harrison was calling press conferences for publicity purposes (Tr. 3421, 3461–63 and 3487). Mr. Kowal interpreted this remark to deal with over-coverage of politicians at the State Capitol and thus, it was a reminder to the news staff to use some discretion in covering press conferences that were not newsworthy (Tr. 3466). Mr. Kowal could not state, i.e., he was not sure if Mr. Harold Gross stated that he wanted no more coverage or just less coverage of Mr. Harrison.

Coverage of State Capitol and City Hall

104. Much of the record in this area has to do with the alleged blackout by GTI of Messrs. Graves, Ryan and Waldron. Mr. Graves has been the Mayor of Lansing since the Spring of 1969 (Tr. 1587). Prior to this he was Treasurer of the City of Lansing (Tr. 9744).[30] He ran for Mayor as a nonpartisan and is considered to be conservative (Tr. 6616).

105. Mr. William F. Ryan served as Majority Leader and Speaker of the Michigan House of Representatives for a period of six years from 1969 until 1974 (Stipulation Tr. 13204–05 and 11890–92). Mr. Ryan is from Detroit and thus was not a local news figure except for his position in the State Legislature (Tr. 12020–21). Mr. Ryan is a Democrat and his political philosophy is considered to be liberal (Tr. 6613).

106. Mr. Ryan's predecessor as Majority Leader and Speaker of the House was Mr. Robert Waldron who served in that capacity for a two-year period—1967–1968. Mr. Waldron is regarded as a conservative (Stipulation Tr. 13204–05 and Tr. 6616).

107. These three politicians are linked together on the alleged GTI blackout because Mr. Harold Gross indicated for example in ACLU Exhibit 28 that the extra film budget allowed news cameramen should not be used for "the Graves, Ryan and Waldron political coverage." There is much testimony and exhibits in the record which present conflicting versions of the GTI coverage of State Capital and City Hall leaders. The Bureau concludes that the GTI (Harold Gross) views were actually orders to the news department to emphasize certain types of news coverage rather than a blackout of any particular event or person. ACLU urges that there was in fact a GTI blackout of Mayor Graves. Here again, the evidence is in conflict as between GTI's (Mr. Harold Gross) orders as to the content of the news and individual views of newsmen as to the news value of certain stories. Mr. Harold Gross testified that based on his broadcast experience and as a 55-year resident of Lansing, he developed certain policies as to the structure of newscasts over GTI facilties. For example, he wanted radio news coverage to be local in nature because of the comparative local AM coverage. The TV newscasts, however, should be oriented toward a regional audience. Thus, if there is a news item about the Mayor's office or City Hall, this would be covered by radio and major or regional news are covered on GTI's TV facility. It is Mr. Harold Gross' testimony that such policy was developed in the early 1950's and has not changed (Tr. 14976–86). Another news policy of GTI or Harold Gross which was the subject of much testimony and exhibits is the mix or balance of hard news and soft/feature/human interest news (ACLU Exhibits 25, 28, 32, 47; GTI Exhibits 100, 116 and 117, p. 1; and Tr. 1596–97).

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[30] No party called Mayor Graves as a witness.

The TV policy, according to GTI, was developed in the mid-1960's (compare Tr. 9776 with Tr. 15062–64). It was Mr. Harold Gross' goal to have a TV newscast consist of six locally-filmed TV news stories with two out of the six stories to be of the soft/feature/human interest variety (Tr. 1596–97). To Harold Gross, this required time, effort and creativity by the news personnel (Tr. 1656 and 1675). He was often critical of the news staff of avoiding the type of soft news story he desired when GTI newsmen would cover what to him was an easier story of less worth such as the always available politicians at the City Hall and the State Capitol (Tr. 1656, 1660, 1670, 1675 and 4890–91). What he had in mind as a feature story was something like the CBS network Charles Kuralt "On the Road" news coverage (Tr. 15360). This philosophy of Harold Gross was a constant source of conflict between Harold Gross and the news staff. For example, Harold Gross issued memoranda critical of excessive political coverage and coverage of unimportant political matters (ACLU Exhibit 45 and GTI Exhibits 103 and 117, p. 3; 120, p. 1 and 151); local news should be on the radio rather than TV (GTI Exhibits 87 and 95); feature stories are important to the proper balance of a newscast (GTI Exhibit 117, p. 1 and ACLU Exhibit 47); politicians are always ready to talk and GTI news staff must distinguish between news and a political viewpoint which may never become a reality (GTI Exhibit 151).

108. Some of the many Harold Gross memoranda to the news staff deal with specific problems Harold Gross had on viewing the GTI newscast. For example, a piece on Mr. Graves was "too long" (GTI Exhibit 103); a TV story on City Treasurer Graves should have been on radio (GTI Exhibit 87); a City Council TV item should have been on radio (GTI Exhibit 95); feature stories are just as important as hard news gathered at the Capital and City Hall (GTI Exhibit 117, p. 1); and telling GTI news reporters to state their location as being at the State Capitol or City Hall (GTI Exhibit 148). All of these memos of Harold Gross had varying effects on the GTI news directors and news staff which produced some subjective reaction by the news staff which varied from a rejection of the order or suggestion of Harold Gross to a belief that Harold Gross did not want a particular individual covered on GTI-TV.

109. Mr. Morgan was a novice reporter for GTI who testified that Mr. Graves called the GTI newsroom frequently and he actually received more coverage in his position as City Treasurer than the Mayor then received. Mr. Harold Gross made some critical remarks to Mr. Morgan during the GTI Presidential election night coverage on November 5, 1968 about Mr. Morgan's coverage on TV of Mr. Graves' view of the election. Mr. Graves was not running for any office at this time (Tr. 10248–50, See also Tr. 6399–6402, 6833 and 6842–45). The remark was made to Mr. Morgan in the presence of a large number of people (Tr. 10432–33) and while Mr. Morgan stated he did not regard the Gross comment as a

blackout directive, but rather a directive to be more selective with his news judgment in the future. While the record is unclear as to just what news Mr. Graves generated in the next three weeks, Mr. Morgan found Mr. Graves not to be a newsworthy person for the next two or three weeks after the incident (Tr. 10431–35, 10267–68 and GTI Exhibition 224, p. 3 and 5 and 5, p. 1). Mr. Tom Jones was particularly close to the news operation in 1968 and 1969 and during this time and up to 1974, Mr. Jones had numerous conversations with Mr. Harold Gross on news policies. While Mr. Tom Jones thought the Harold Gross views on the content of the news were solely in terms of news judgment, he often resorted to the use of hyperbole and strong reaction, which was the case with Mr. Morgan on election might in November, 1968 (Tr. 6959–61, 6963–64, 10250–51, 6401–02 and 6876). At one time Mr. Harold Gross stated" . . . if i see nothing but flower shows and smiling faces and human interest stories for the rest of my natural days I will die in peace" (Tr. 7458–59). Thus, there was a constant battle of words and memos between Harold Gross and the news staff. The news staff did cover Gerald Graves but, it is clear from the record that Harold Gross thought Graves was getting too much coverage on GTI. For example, ACLU Exhibit 25 was posted on the GTI bulletin board. It was a memo to Bradley Bate (News Director) which told him to "get rid of Graves, Ryan, Waldron dominances". Harold Gross testified that this memo was the result of his belief that Graves was over-covered (Tr. 1594). Mr. Bates' own belief was that Mr. Graves was not over-covered (Tr. 2838). Mike Wright, who was employed by GTI as a news director between May, 1966 to October, 1968, said Mr. Graves was not covered when he did something the station did not consider newsworthy and he was not over-covered (Tr. 10737). William Dansby, who was in the GTI news department between August, 1963 and April, 1967, said Graves was covered when he made news (Tr. 9617 and 9731). It also appears that Mr. Tom Jones recalls two GTI news employees complained to him (George Blaha and Jerome Francisco) that Harold Gross told them he wanted less coverage of Mr. Graves (Tr. 7547). Tom Jones also recalls that some of the news staff people felt that Harold Gross' orders caused them to feel inhibited in their coverage of Mayor Graves (Tr. 6893). George Blaha did not recall receiving any orders from Harold Gross about coverage of Mr. Graves, but he does recall talking to Mr. Jones about it, and Mr. Jones told him to continue covering the news as he saw fit and to put newsworthy stories on the air (Tr. 12282). Mr. Harold Gross, according to GTI news employee Mr. Andrew Such, referred to Messrs. Graves, Ryan and Waldron as a synonym for politicians in general and this phrase often used by Mr. Harold Gross was not a specific reference to these three persons (Tr. 10508). Mr. Such believed that Mr. Harold Gross could have used the names of other politicians if he had such names at his fingertips when he wrote his memo to Mr. Such (Tr. 10508–09). When the memo was written to Mr. Bate, Mr. Waldron was no longer a member of the State Legislature (Stipulation Tr. 13204–05). Mr. Jones believed Mr. Harold Gross to be "apolitical" in his attitude on the Graves, Ryan and Waldron matter (Tr. 7471).

110. Mr. Clifford Lawrence testified in this proceeding. He was Acting TV News Director, July–December, 1970 and Assignment Editor, November, 1972–April, 1973. On direct examination, he recalled statements of Harold Gross to the effect that he did not want to see any more coverage of the State Capitol, City Hall or Mayor Graves. However, on cross examination, he indicated that Mr. Harold Gross' statements were in the context of news judgment, the reporting format, using handouts from politicians as news stories instead of reporting other news and that Mayor Graves should be covered on GTI radio and not TV. Mr. Gross was particularly critical of what he termed the GTI "talking head" format which was the "easy way out" (Tr. 7523, 7531, 7640, 7595–96, 7494 and 7633). After this Harold Gross criticism, Mr. Lawrence's news format reduced the use of the so-called "talking heads", including that of Mr. Graves, Mr. Harold Gross' criticism then ceased. Mr. Lawrence recognized that Mr. Graves frequently engaged in "irrelevant monologues" which Mr. Lawrence ignored. It is Mr. Lawrence's testimony that he never suppressed a newsworthy story which included Mr. Graves and ongoing coverage of Speaker Ryan, the State Capitol and City Hall (Tr. 7633–35, 7599–7601, 7651–55 and 7632–33).[31]

111. Mr. Howard Lancour was the GTI news director from January, 1971 to October, 1971 and also testified in this proceeding (Tr. 10091 and 10073–74). He too received a critical memo from Mr. Harold Gross dated May 5, 1971 (ACLU Exhibit 45). The memo dealt with six items on which Mr. Harold Gross was critical of the GTI news operation under Mr. Lancour's supervision. One of the items contained the following statement: "3. We are right back to talking to politicians again about unimportant matters . . . I thought Ryan's personal view of the education situation was uncalled for". The other five items in the memo dealt with the wisdom of sending a full news crew to Flint which was some distance away; a reporter appeared to be reading from his notes and not looking into the camera; urging greater use of a so-called chrome key for stills on action pictures behind the newsman; the switching was too slow; and the closing shot showed too much of the set and not enough of the news team. Mr. Harold Gross had no specific recall of this memo, but insisted his views of the Ryan story were not based on his personal feelings or any

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[31] Mr. Lawrence took a cavalier approach to his testimony. He refused to correct and return the oral deposition after repeated requests to do so. He also at first refused to answer certain questions about his current employment which after discussion between the Court and Counsel and a short recess he finally did answer. Thus, while he did have some knowledge of the matters at issue, his testimony must be discounted to some extent.

views he had on Mr. Ryan. It was just another memo which made comments about the newscast itself and similar to many other memos in the record (ACLU Exhibit 23, GTI Exhibit 7, pp. 12 and 14, GTI Exhibits 87, 95, 103, 104 and Tr. 1684 and 15425–26). Mr. Lancour's subjective reaction was that the Harold Gross memo was not a directive to suppress coverage of Mr. Ryan (Tr. 10092).

112. GTI did find in its files the film and transcript of the Ryan story which resulted in Item 3 of the memo to Mr. Lancour (GTI Exhibit 219, pp. 81–85, Tr. 12404–07 and 12841t). It appeared that at this time, there was before the State Legislature an education reform package proposed by Governor Milliken which linked education reform to a proposed graduated income tax (GTI Exhibit 219, 220, 253 and Tr. 12410) and it appeared that the ACLU theory was that Harold Gross wanted to suppress Mr. Ryan's views on the Governor Milliken proposal. The film and transcript of Mr. Ryan, as used on the May 3, 1971 GTI news shows that Mr. Ryan was not addressing the education reform issue (GTI Exhibit 219, pp. 81–85, Tr. 12404–07 and 12841t). GTI also introduced all news scripts and film which covered the position of the Democratic Party, including Mr. Ryan, on the Governor's education reform bill. In all GTI carried some 270 news stories on the education reform bill (GTI Exhibits 219, 220) and Mr. Lancour stated that these stories covered all issues involved in the education reform bill and Mr. Harold Gross made no critical remarks about such coverage (Tr. 12416–17).

113. Mr. Such, who was a former GTI news employee and a former Director of Communications for Mr. Ryan was in accord with Mr. Lancour's opinion (Tr. 10514–16, 12841n, 12841k–41–1 and 12841hh). Mr. William F. Ryan was called as a witness by GTI and based on his personal recollection the GTI coverage of the education reform bill was fair (Tr. 14681–82).

114. Mr. Robert Billman was a GTI TV News Director from October, 1971 to October, 1972 and he was a witness (Tr. 10890–92). He has much the same experience with GTI (Harold Gross) as Mr. Lancour. Mr. Billman was told that he did not want reporters "to sit on their duffs at the Capitol press room, but to go out and dig for stories" (Tr. 11013–14). Again, Mr. Harold Gross used Messrs. Graves and Ryan as examples of politicians who were being over-covered. Mr. Billman did cover political figures including Messrs. Graves and Ryan for GTI. It was the view of Mr. Billman that there was no political figure who appeared on GTI TV more often than Mr. Graves (Tr. 10875). Mr. Billman recalled one conversation with Mr. Harold Gross to the effect that Mr. Gross would buy Mr. Billman a drink if he ever came up with a GTI newscast that contained no hard news. Mr. Billman never collected (Tr. 10935–36 and 10991). In accord with the general nature of the experiences of Messrs. Lancour and Billman on Mr. Harold Gross' view of GTI news coverage were Mr. Thomas Ray (Tr.

3643–44); Mr. George Blaha (Tr. 12240, 12268, and 12282–83); Messrs. William Beer, Robert Ivers and Walter Sorg, Jr. (Tr. 13020–21, 13029, 12588–90, 12607 and 4298).

115. There is testimony in the record that Mr. Harold Gross' rather blunt memo had different effects on different GTI news employees. When Mr. Billman received an additional film budget, Mr. Harold Gross said he wanted this used for more features and to hold political reporting to a minimum (ACLU Exhibit 55). Mr. Little was GTI TV news photographer during this time (August 3, 1972) and it is his testimony on direct examination that until his departure from GTI on September 20, 1972, the news staff "stayed away" from the State Capitol (Tr. 3515 and 3522–24). However, on cross-examination and review of some of the GTI news scripts and films that during this 47-days period, Mr. Little covered seven stories at the State Capitol and twelve other stories on the State Government (Tr. 3549–54). GTI records show that during this 47-day period, WJIM-TV carried 142 State Capitol news stories (GTI Exhibit 13, pp. 222–36).

116. Since ACLU singles out Mr. Graves as a special target of alleged GTI news blackout, this matter has been reviewed based on the hearing record and again Harold Gross' memos play an important part. The ACLU theory was that GTI (Harold Gross) had sought to black out coverage of Mayor Graves by telling the news staff that Mayor Graves was just a publicity seeker and lacked news value; that Mayor Graves was being over-covered by GTI; and the Mayor was singled out specifically for less coverage. There is little doubt that both Treasurer and Mayor Graves was a local public figure and that he was a routine source of news and that he could provide a lot of so-called grapevine information (Tr. 2847 and 10251–53). There is likewise no doubt that Harold Gross told various staff members that Mayor Graves was "always seeking publicity" (Tr. 4910 and 6873).

Lansing Tennis Club

117. This is one of a number of incidents in which the Bureau and ACLU allege that the GTI sports programs which were generally a segment on GTI TV and radio programs were altered as to content to serve the private interests of GTI. This particular incident concerns an alleged order of Harold Gross to cease coverage of the Lansing Tennis Club because their advertising account with GTI was in arrears. The Bureau recommends a finding that Harold Gross' actions respecting the Lansing Tennis Club were inconsistent with the obligations imposed on a licensee and reflect adversely on GTI's qualifications.

ACLU requests the ultimate conclusion that this entire matter represents such a degree of lack of candor and misrepresentation to the

Commission as to warrant nothing less than termination of the GTI licenses.

118. Mr. Timothy B. Staudt has been the sports director of GTI since May, 1971 (Tr. 8644). Mr. Staudt both produces and broadcasts two radio sport programs per day of five to ten minutes duration and two sports programs per day (five days a week) for GTI TV. In addition, Mr. Staudt does some sports specials such as Michigan State University's athletic events (Tr. 8644–45). In addition, interviews with the Lansing Tennis Club were carried on GTI's Martha Dixon TV Show. GTI covered a number of events on the construction and operation of the Tennis Club during 1971 and up to December 26, 1972. Thereafter, coverage ceased until July, 1973. It is this gap that these findings are concerned with.

119. Mr. Staudt states that he normally plans his local TV stories in advance of the day they are to be broadcast (Tr. 8653–54) and attempts to have at least one, but prefers two or three, stories for each broadcast (Tr. 8649–50). It is his policy to have a locally-produced film of each story he selects because if he has a story on bowling or golfing, he wants to show the TV audience the bowler he is talking about actually bowling (Tr. 8655). His sports reporting is a mixture of hard and soft news. Hard sports news to him is things such as scores, deaths of sports figures and changes of position of various sports figures. Soft sport news is more of a human interest nature that can be broadcast at any time within a given period of time (Tr. 8650).

120. There was film coverage by GTI of the Lansing Tennis Club on December 26, 1972 concerning the opening day of the Western Closed Indoor Championship. Next, Mr. Staudt received a memorandum from Harold Gross dated December 27, 1972 which is Bureau Exhibit 26 and reads as follows:

> I heard your story last night on both 6 and 11 on the Tennis Tournament being conducted at the Lansing Tennis Club. These people owe us $1,500[32] which is a year overdue and are making no effort to pay us. Considering these circumstances. I do not want to give them any publicity on the Club or any of their activities.

A similar memo dated April 23, 1973 was sent to Mr. Staudt with a copy to Ms. Martha Dixon that is Bureau Exhibit 32 and reads as follows:

> We are still experiencing problems in collecting from the Lansing Tennis Club. They have not kept the promise they made to me several months ago, and I want absolutely no coverage or news about their club until I give you a further okay. You might let Mrs. Schultz know that I am disappointed with her refusal to keep her promise and unless we receive payment we will take it to court for further action.

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[32] It appears the actual amount owed by the Lansing Tennis Club to GTI was $1,731.50 (Bureau Exhibit 49 and 62).

Mr. Harold Gross testified that the intent of these memoranda was that Mr. Staudt and Ms. Dixon should guard against giving the Tennis Club any free publicity until the bill was paid, but that he did not intend any suppression of valid sports coverage (Tr. 1974–77).

121. Mr. Staudt said he had never before received a memo from Mr. Harold Gross about an advertisers bill (Tr. 8823) so he questioned Harold Gross about it when he passed him in the hall (Tr. 9201 and 8826). Mr. Staudt was not clear as to what had taken place during this hall conversation with Harold Gross. At Mr. Staudt's deposition he indicated that Mr. Harold Gross may have suggested that he call Mrs. Schultz about the outstanding bill. However, Mr. Staudt believed he replied that he had good relations with the Tennis Club and Mrs. Schultz and the bill was not going to be a problem (Tr. 9207). At the hearing, Mr. Staudt was still not absolutely clear as to his conversation with Harold Gross on December 27, 1972 but he doubted he ever called Mrs. Schultz. Further, Mr. Staudt stated that this event had no effect on his coverage of the Lansing Tennis Club or his news judgment as to the particular sports stories to be covered and that the memo did not change station policy (Tr. 8829–30, 9207, 8823–24, 9202, 8841, 9206, 8812–19, 9200 and 8828). The particular tennis tournament continued through December 28, 1972 but GTI gave no reports of the results of the tournament (GTI Exhibit 49, p. 2; Tr. 8819–20). It was Mr. Staudt's interpretation of the Harold Gross memo of December 27, 1972, i.e., his news judgment and coverage of the Tennis Club remained unchanged, resulted from his conversation with Harold Gross on December 27, 1972 and also as a result of his close relationship and understanding of Mr. Harold Gross (Tr. 8047, 8693–94, 8712, 8826–27 and 8836–43). Thus, while there was no TV coverage of the Lansing Tennis Club, Mr. Staudt stated, based on his memory and what files still remained for this period at GTI, that he had originally planned only one day of coverage of the Tennis Tournament on December 26, 1972 because he has been advised by the Tennis Club that the local people who had entered the tournament were not then of proficient quality to last beyond the first day. However, while there are no GTI records, Mr. Staudt does recall that he had an arrangment with the Tennis Club that someone from the Club would call in the tournament results and he aired such results over the radio (Tr. 8788–92). Mr. Staudt said because of his prior knowledge that local players would be eliminated on December 26, 1972, the Christmas holiday and his policy of pre-planning his sports programs several days in advance, he had previously planned to cover on December 27, 1972, a feature on family skiing at the Lansing Ski Club and an interview with Los Angeles Dodgers pitcher Mike Marshall who resides in the Lansing area during the off-season (Tr. 8818–19, 8812–15, and GTI Exhibits 168–169). It is Mr. Staudt's testimony that while GTI does keep tapes of the TV news coverage, scripts are not kept of radio coverage (Tr.

8789 and 8790). Mr. Staudt, except for the $1,500 mentioned in Mr. Harold Gross' December, 1972 memo, was not aware of the Lansing Tennis Club advertising account. The next event Mr. Staudt decided to cover at the Lansing Tennis Club was the Western Outdoor Tournament in July, 1973. When Mr. Staudt made the decision to cover the Western Open, the Club's advertising bill had not yet been paid. However, by the time the actual GTI coverage took place, the Club's advertising bill was paid (Bureau Exhibit 49, Tr. 8829–30 and 9210–12). It appears that the GTI auditor had communicated with Mrs. Schultz about the outstanding bill but the details of this were unknown to Mr. Staudt. It was Mr. Staudt's testimony that, based on his own news judgment, most of the events at the Lansing Tennis Club were between the local club members and did not involve a matter of general interest (Tr. 9160–63). Thus, there was no event which warranted coverage until July, 1973 when the Western Open took place there which was a natural event sanctioned by the United States Tennis Association (Tr. 8607). Mr. Ferman testified and he is an official of the Lansing Tennis Club. He confirmed that only two events at the Lansing Tennis Club during this period of time were sanctioned by the United States Tennis Association. They were the Western Indoor in December, 1972 and the Western Outdoor in July, 1973. It is Mr. Staudt's testimony that his sports news coverage between December. 1972 and July, 1973 were all based on his own judgment as to news value without regard to consideration of anyone so covered status as a GTI advertiser (Tr. 8852–53, 8677–84, 8734–35, 8870, 8880–81, 8897 and 9093–95). Between 1971 and 1973, GTI did have scripts on film documentation of GTI's coverage of the Lansing Tennis Club on 19 occasions (GTI Exhibit 49, 49A, pp. 1–2, ACLU Exhibit 130, Tr. 8674–77, GTI Exhibit 49B, p. 1, Tr. 8733–35, 8681–84, 8726–27, 8687–88, 8692–94, 8701 and 9198). Mr. Staudt recalled that on one occasion he covered the Lansing Racquet Club rather than the Lansing Tennis Club because the Racquet Club was holding tournaments of the Virginia Slims Women's Pro Tennis Satellite Tour which in his news judgment, was more important than the Western Tournaments at the Lansing Tennis Club because the Virginia Slims was the first professional tournament held in Lansing (GTI Exhibit 50, Tr. 9393–94). GTI undertook a study of some of the GTI advertisers that had been covered in Mr. Staudt's sports news and it appeared that the Lansing Racquet Club was an advertiser for seven months over a three-year period, the Lansing Tennis Club purchased no advertising on GTI after July, 1972, the Lansing Ice Arena was an advertiser for a brief time in 1972, the Lansing Ski Club advertised in December, 1973 and the Metro Ice Arena did not advertise at all (GTI Exhibits 49–52B).

122. This incident has many more parts which will be considered *infra*. However, in point of time sequence, Ms. Dixon should now be considered since she received a copy of the April, 1973 Harold Gross memo on the

failure of the Lansing Tennis Club to pay its advertising bills. Martha Dixon was a long-time employee of GTI and she was the Women's Personnel Director of GTI and had her own TV show which was a daily TV show directed to women and community affairs (Tr. 5968–69). Ms. Dixon had known Betty Schultz the owner of the club for about one year before the Lansing Tennis Club opened. And she took periodic tennis lessons at the Club from the day the Club opened in 1971 and she continued to take tennis lessons at the Club for about two years after receiving the Harold Gross April, 1973 memo. Both Betty Schultz and Martha Dixon testified and their testimony is in direct conflict. Ms. Dixon called Mrs. Schultz, sometime during this period to cancel a tennis lesson appointment (Tr. 8388). Then, subsequently, Ms. Dixon again called Mrs. Schultz and told her that she (Ms. Dixon) had been ordered by her boss to stop patronizing the Club because she had not kept up the payments owed to GTI (Tr. 8388–89). Ms. Schultz did not know if the word "boss" had reference to Harold or James Gross (Tr. 8389). Further, perhaps monthly or frequently during the time the Club owed money to GTI for advertising, Ms. Dixon would call to say her bill was still overdue (Tr. 8391). Both Harold and James Gross testified that they had no such conversation with Ms. Dixon (Tr. 15238 and 6187). Further, Ms. Dixon continued her tennis lessons from the time it opened (1971) until 1975 and Mrs. Schultz admitted that during this same time frame, *i.e.*, sometime between January and July, 1973, Mr. James Gross and his family were members of the Tennis Club and participated in Club Activities (Tr. 8530–31 and 15238–39). Mr. Harold Gross knew of James Gross and his family's participation in the Club activities during the critical time period and voiced no objection about it (Tr. 15238–39). While Martha Dixon did sell some GTI advertising, she does not recall ever having the Lansing Tennis Club as one of her accounts and no one asked her to assist in the collection of the outstanding GTI bill. However, Ms. Schultz said she received frequent telephone calls, perhaps monthly, from Ms. Dixon during the period of the unpaid bill to the effect that the Tennis Club advertising account with GTI was overdue (Tr. 8391). Ms. Dixon said she was asked by no-one at the station to call about the overdue bill, but she was aware of rumbling at the station about the overdue bill and she did recall numerous telephone calls with Ms. Schultz (Tr. 6172, 6202 and 6204). Bureau Exhibit 46 is a letter of April 23, 1973 from Mrs. Schultz to Ms. Dixon noting that the club's account with GTI had been brought up-to-date and thanking Ms. Dixon for the good work she had done for us (Tr. 8390).

123. When Mr. Staudt was considering coverage of the Western Open (tennis tournament) in July, 1973, he passed Mr. James Gross in the "Country House" hallway and asked if it was alright to cover the Western Open and Mr. James Gross responded affirmatively (Tr. 15669–70). The Lansing Tennis Club was not mentioned but, Mr. James Gross knew that

the Lansing Tennis Club was handling this event (Tr. 15669–70). Mr. James Gross stated he did not know or ask the reason for Mr. Staudt's question and while he was familiar with the status of the Lansing Tennis Club account, he had not seen Mr. Harold Gross' memoranda on the subject (Tr. 15669, 15878, and 15668–69). Mr. Staudt could not recall asking Mr. James Gross this question (*i.e.*, the hall encounter) and he did not not know what the status of the outstanding bill of the Tennis Club was when he decided to cover the Western Outdoor (Tr. 8717 and 9409). There was considerable questioning about Mr. Staudt's news judgment in covering Lansing Tennis Club stories in 1971 and 1972 when no comparable coverage was given to the event in 1973. Mr. Staudt maintained that no news story can be considered by him in the abstract. Rather, all possible sports stories are considered by him in the context of other possible sports stories for that day (Tr. 9152). Further, even if there was a possible sports story at the Lansing Tennis Club, there were technical problems of taking pictures indoors at the Club and for this reason he would caution the GTI TV photographers to make sure that they were taking the best equipment available (Tr. 9259 and 9277–79).

124. A series of events then took place which eventually caused the Commission to inquire into the alleged news blackout of the Lansing Club. On October 17, 1973, the Detroit *Free Press* published the text of Harold Gross' December, 1972 and April, 1973 memos to Mr. Staudt about the Lansing Tennis Club (GTI Exhibit 173). Both Mr. Staudt and Mr. James Gross remember reading the article when published. Mr. Staudt then reviewed a file he kept in his office and found that these memoranda were missing (Tr. 9398–99 and 9401). Mr. Staudt said he was "extremely irritated" about the missing documents from his file and without receiving directions from anyone at GTI proceeded to destroy the rest of this file (Tr. 9402). Neither Messrs. James or Harold Gross had any prior knowledge of Mr. Staudt's decision to destroy the file (Tr. 9398–99, 9401–02, and 15240). Thus, these two in-house memorandums were now general public information. While Mr. Staudt cannot remember the details of a Commission investigation about Tennis Club coverage, he did acknowledge that he signed a statement for the FCC investigator on October 23, 1973 (Tr. 9189–90 and 9310–11). Next on February 1, 1974, two letters were sent by Mr. William B. Ray of the Commission, one of which dealt with an ACLU complaint against GTI. The other requested GTI's response to the alleged news blackouts of the Lansing Tennis Club (Bureau Exhibit 82). Responses to the Commission letters were due by February 21, 1974 (GTI Exhibit 165, p. 1). GTI stated that a response to the ACLU complaint required a great deal of research on its part and a response to the ACLU petition was filed on February 21, 1974 after both Harold Gross and Tom Jones had come to Washington to review this matter with Communications Counsel. However, GTI did not believe it could file a timely response

to the Commission's letter concerning the Lansing Tennis Club so it requested and received an extension of time until February 28, 1974 to answer this letter (Bureau Exhibit 82, p. 1 and 82A, pp. 53–55). There followed a review of the sports scripts and a listing of coverage afforded by GTI of the Lansing Tennis Club. It appears that Mr. Thomas B. Jones either did the review or supervised most of this work and after the history of GTI coverage of the Lansing Tennis Club was put together, both Messrs. Harold Gross and Jones concluded that the Lansing Tennis Club had received more than fair and adequate coverage and too much coverage if comparison was made to other TV media and comparison to the coverage GTI afforded other comparable organizations such as the Lansing Racquet Club and the Metro Ice Arena. Thus, a draft reflecting these findings and opinions was prepared (GTI Exhibit 165, p. 11, Bureau Exhibit 82A, pp. 57–59 and Tr. 14311–12). This draft GTI response was prepared in Washington where it was decided that a letter from the Lansing Tennis Club confirming the findings of Messrs. Harold Gross and Jones would be helpful as an attachment to this response to the Commission's letter. Thus, Messrs. Gross and Jones returned to Lansing from Washington on Thursday, February 21, 1974 with the draft and a plan to get a letter from the Lansing Tennis Club (Tr. 14311–12, Bureau Exhibit 82, p. 1 and Tr. 14316–17).

125. The next day Mr. Harold Gross asked Mr. Staudt to request a letter from Mrs. Schultz, the owner of the Lansing Tennis Club (Tr. 7896–97). Mr. Staudt was provided with the dates the Club was covered by GTI and asked to get Mrs. Schultz to write a letter indicating her satisfaction with WJIM-TV performance in this respect. Mr. Staudt was pressed to get the letter by the close of business that same day (Friday, February 22, 1974) (Tr. 7896–98, 7973–74, 8057, and 1994–95). Mr. Staudt did then call Mrs. Schultz and asked if she would write a letter in her own words supporting GTI. He also gave Mrs. Schultz the dates of GTI coverage of the Lansing Tennis Club (Tr. 7901, 7903, and 8057). Mrs. Shultz did write the letter on February 22, 1974 and it was picked up on the same date by Mr. Tremper of GTI and mailed to Washington, D. C. counsel. Mr. Staudt did not read the letter.[33] (Tr. 8334–35, 1998, 17908, and 7958–59). The Lansing Tennis Club letter was then forwarded to GTI Washington Communications Counsel with a transmittal letter dated February 22, 1974 from Mr. Harold Gross to the effect that a personal reference by Mrs. Schultz was unnecessary and he was not happy with the letter but that he would seek another letter omitting the objectional parts if counsel thought it advisa-

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[33] Mr Staudt did have some interest in the Tennis Club letter because of his part in obtaining it and he apparently asked Mr. Tremper if he had obtained the letter. It appears Mr. Tremper did show Mr. Staudt the envelope and opened the envelope and showed Mr. Staudt just long enough so he could see it was on the Lansing Tennis Club letterhead and signed by Mrs. Schultz (Tr. 7958 and 7963).

ble (ACLU Exhibit 172, Tr. 1999). While it is not clear in the record, due to the memory of the individuals involved, the letter was sent by GTI to counsel and it was received on either Monday, February 25th or Tuesday, February 26th. In any event, Washington counsel agreed with Mr. Harold Gross' objections and called Mr. Harold Gross on February 26 or February 27 and dictated a proposed letter to be a replacement for Mrs. Schultz's first letter. The dictated revision of the letter proposed to delete the personal reference, incorporate a conclusion that GTI's coverage of the Lansing Tennis Club had been fair and adequate and correct one of the dates used by Mrs. Schultz in the first letter. It appears that Mrs. Schultz's letter provided to GTI noted the GTI coverage given to the Club opening in January, 1972, but GTI records showed such coverage was in December, 1971. The letter dictated by counsel to GTI as a proposed revision of Mrs. Schultz's letter omitted reference to the actual date of the Tennis Club opening (Tr. 2003, 2007, and Bureau Exhibit 82A, p. 12).

126. On February 26, 1974, just two days before the GTI answer was to be filed at the Commission, Harold Gross asked Mr. Staudt to again contact Mrs. Schultz and get the revised letter as dictated by the GTI Washington counsel. Again, Mr. Harold Gross expressed a sense of urgency and told Mr. Staudt that he wanted the revised letter by 5 P.M. that same day. At this point, a question is presented whether Mr. Staudt knew before he undertook to get the revised letter that Mrs. Schultz would not be available, as she was in the hospital undergoing a surgical operation on that day. On the previous Saturday, February 23rd, the Lansing Tennis Club had a social affair and Mr. Staudt attended the event. According to Mrs. Schultz, she was dressed in tennis clothes for the Saturday affair which made a steel brace on her knee visible (Tr. 8474). Mrs. Schultz recalls talking to Mr. Staudt that day and, among other things, she told him that she was scheduled for knee surgery the following Tuesday (Tr. 8347). Mr. Staudt states he called the receptionist, Ms. Lynnette Baker, and dictated to her over the telephone the text of the revised letter. Ms. Baker remembers the call from Mr. Staudt and his explanation that GTI needed to have the revised version of the letter, since the first letter contained an incorrect date and since the letter was for "legal purposes" the letter should be accurate in this respect. After the letter was retyped, Mr. Staudt requested Mrs. Schultz to sign it. Ms. Baker then informed Mr. Staudt that Mrs. Schultz was at that very hour under surgery for her knee and thus would not be available to sign the revised letter (Tr. 8206 and 8222–23). Actually, Mrs. Schultz remained in the hospital until Friday, March 1 (Tr. 8347). All this assumes some importance because a question arose as to just how candid Mr. Staudt was with Mr. Ferman, the person in charge during Mrs. Schultz's absence and the person who signed the revised letter requested by GTI. Ms. Baker indicated that Mr. Staudt had indicated the necessary change of date and

other modifications of the letter before Mr. Staudt was told Mrs. Schultz was not available to sign the letter (Tr. 8220–21). It is Mr. Staudt's position that he did not know of Ms. Schultz's hospitalization prior to gaining such knowledge from Ms. Baker (Tr. 8081–84). Such matters have a bearing on the credibility of Ms. Schultz and Mr. Staudt in connection with events which immediately followed concerning the GTI request for the revised letter.

127. When Mr. Staudt heard that Ms. Schultz was not available, he asked to talk to Mr. Ferman, who was personally known to Mr. Staudt. He was then giving a tennis lesson so Mr. Staudt dictated the text of the revised letter to Ms. Baker and asked that Mr. Ferman call him when he returned to the club house. Mr. Ferman did return the telephone call from Mr. Staudt and he recalls being told about the date change and certain other matters which were clarified or modified in the revised letter. There was no comparison with Ms. Schultz's letter by either Ms. Baker or Mr. Ferman so Mr. Ferman signed the revised letter based on the representations of Mr. Staudt. Mr. Ferman testified that had he been aware of the full extent of the changes in the revised letter, he would not have signed it (Tr. 8584, 8617, 8240, and 8586). However, Mr. Ferman, as the tennis pro, did have some independent knowledge of the coverage afforded the Club by GTI (Tr. 8596–8601), and that he was the subject of interviews by GTI sports reporters (Tr. 8597–8600). Mr. Staudt reported to Mr. Harold Gross that Ms. Schultz was unavailable and that Mr. Ferman, the next in the chain of command, was willing to sign the letter (Tr. 7927–28, 8070, and 8074). Mr. Harold Gross then telephoned his Washington communication's counsel and was advised that in the absence of Ms. Schultz, the letter could be signed by the person in charge during her absence (Bureau Exhibit 82, pp. 2–3). The revised letter, signed by Mr. Ferman, was picked up by GTI on Tuesday, February 26, 1974 and mailed to counsel that same day and it was filed with the Commission on February 28, 1974 as a part of GTI's answer to Mr. Ray's letter (Bureau Exhibit 82, p. 3).

128. On Thursday, February 28, 1974, Ms. Baker and Ms. Gates visited Ms. Schultz at the hospital and informed her of Mr. Staudt's request for a second letter in support of GTI, and that such a letter was delivered to GTI signed by Mr. Ferman (Tr. 8212–13). Ms. Schultz was upset on receiving this information and called Mr. Harold Gross and Mr. Gross said he would meet with her on the matter (Tr. 7930, 2038, 7935, and 8371).

129. Ms. Schultz was discharged from the hospital shortly after noon on Friday, March 1, 1974 and she returned to her home. Within one or two hours after this, Messrs. Harold and James Gross and Mr. Staudt met with Ms. Schultz on this entire matter (Tr. 7936 and 8372). Mr. James Gross knew little or nothing about this matter as he had been on vacation and was provided with some of the background information when the

three GTI representatives were in an automobile on their way to Ms. Schultz's home.

130. Ms. Schultz, apart from non-relevant conversation, said she was unhappy about the whole matter.[34] It is clear that during the meeting at Ms. Schultz's home, she objected to any changes in her letter without her knowledge; she wanted nothing more to do with the matter; and wanted both letters returned (Tr. 8413, 8418, 8421–22, 8373, 7939 and 5446). Ms. Schultz was told that both letters had already been sent to Washington Communications Counsel but GTI would contact counsel to see if they could comply with Ms. Schultz's wishes and GTI would do its best to comply with her request (Tr. 5446, 8484, 8374, 8485, and 5446–47). After the GTI-Ms. Schultz conference at her home had concluded, Mr. Harold Gross did contact his Washington, D.C. counsel, but, this was on a Friday evening, after regular business hours (Bureau Exhibit 82A, pp. 53–54). Nothing was done at that time except Washington counsel stated he would take the entire matter up with a senior member of the law firm, who was then out of town, the following Monday (Bureau Exhibit 82, p. 3). The following Monday morning (March 4, 1974) there was a telephone conversation between the two members of the Washington law firm involved in this matter and Mr. Harold Gross. A decision was made during this telephone call to withdraw reliance at the Commission on the Lansing Tennis Club letter signed by Mr. Ferman and that Mr. Harold Gross would be responsible for advising Ms. Schultz of this decision and the law firm would advise the Commission. Mr. Harold Gross did post a letter to Ms. Schultz on the same day and the law firm had prepared a letter within 48 hours to Mr. Ray of the Commission. However, while there was an attempted delivery of the letter to Mr. Ray on March 6, 1974, it was decided that the letter to Mr. Ray should be supported with an affidavit executed by Mr. Harold Gross. Thus, the March 6th delivery was aborted and the letter was actually filed on March 8, 1974 together with Mr. Harold Gross' affidavit (Bureau Exhibit 82A, pp. 30 and 31, Bureau Exhibit 55 and 56 and Bureau Exhibit 82A, pp. 47–48). It appears that while the Commission had set a February 28, 1974 deadline for filing the GTI reply, it does not appear that the Commission placed any reliance on the Ferman letter before receiving GTI's late notice that it was withdrawing reliance on this letter. Subsequently, on March 13, 1974, Washington counsel sent a letter to Ms. Schultz.

131. To conclude the tennis club matter, it is Staudt's testimony that events at the Lansing Tennis Club involved primarily in-house members which are not events general public interest (Tr. 9160–63). It is Staudt's

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[34] Ms. Schultz said when she arranged the appointment to see Mr. Harold Gross, she expressed over the telephone that she "wanted" both letters removed forever (Tr. 8371).

belief that there were of major tournaments of general public interest or the appearance of a celebrity that occurred at the LTC between the date of the Harold Gross memoranda in December, 1972 and April 1973 and until the next item of television sports coverage in July, 1973 (Tr. 8855, 9160–61). It is Staudt's testimony that he did give the LTC comparable coverage to that of similar organizations in the area such as the Lansing Racquet Club, Lansing Ski Club, the Lansing and Metro Ice Arenas and the Walnut Hills Country Club and that coverage of all of these local organizations was based upon his sports judgment and without regard to their status as GTI advertisers (Tr. 8677–84, 8734–35, 8870, 8880–81, 8897, 9093–95).

Other Incidents of Alleged News Suppression

132. The Lansing Tennis Club incident was the basis for inquiry that GTI may be distorting its news coverage to promote some private interests of GTI. It is Harold Gross' testimony that he "generally" left it up to the news department to determine if news coverage of a commercial establishment was warranted (Tr. 2158–59, 2172–73, 2193). There are three memos in evidence on stories run on GTI as news coverage which Harold Gross considered too commercial—a feature on the wall decorations (pictures of sports figures) in the Pretzel Bell Restaurant; an ad-lib comment regarding bargains at a going-out-of-business sale at the Federal Department Store and a sports feature of an archery expert at the Montgomery Ward Store (GTI Exhibits 27, 28, 30, 31, 68, 68A, pp. 5, 66, 179; ACLU Exhibits 146, 156).

133. At the time of these critical memos, Montgomery Ward was an advertiser and Pretzel Bell was an advertiser before and after the time of the criticism (GTI Exhibit 68A; ACLU Exhibit 216).

134. It was the general policy of GTI, based on Harold Gross' testimony, that a news story on GTI should avoid, where possible, using the name of a commercial establishment and of taking particular care to avoid use of a commercial establishment where a competitor would be a sponsor of the news program (Bureau Exhibits 8, 22; Tr. 2269–71). James Gross shared such views (Tr. 15430–32).

135. However, because of the commerical and industrial makeup of the Lansing area, some commerical and industrial establishments do from time to time make the news. Some of the larger establishments are Oldsmobile, Michigan National Bank, Meijers and Sears (Tr. 15203). Both Harold and James Gross state that there never was a policy or practice of keeping its news department staff informed on the status of advertising accounts (Tr. 15203, 15687).

136. Prior to the start of this proceeding, GTI had filed a letter with the Commission (letter to Mr. Ray dated February 28, 1974, GTI Exhibit 165 pp. 16–17) which recognized a media conflict between news staff, editorial

staff and the sales staff. The sales staff is anxious to obtain news coverage for their existing or prospective clients, and, this is particularly evident when there is a store opening or a special event. To solve this, Harold Gross states that he has instructed the news department to refuse all requests for news coverage made by the GTI salesmen. To this extent, testimony was introduced to the effect that when the sales staff did seek some news coverage of an event, such suggestion was turned down (Tr. 12535, 12531–36, 12464).

137. Likewise, GTI presented a member of GTI news department witnesses who stated that they did receive requests for news coverage from the sales staff but any final decision to cover a story based on such suggestion was based solely on the judgment that the story was newsworthy (Blaha, Tr. 12248; Dansby, Tr. 9691–92; Davis, Tr. 12313; Lancour, Tr. 10103–22; Morgan, Tr. 10292–93; Such, Tr. 10543–44 and Wright, Tr. 10586). Mr. Tom Jones often acted as a buffer between the sales staff and the news staff at GTI. His advice was that if a salesman sometimes provided a genuine story, tell the salesman it will be covered, but, if it is not newsworthy, be as much of a con man as the salesman and send him away (Tr. 14327–28). With this background, the GTI commitment to such a policy was tested going back over a period of 20 years.

138. Oldsmobile automobiles are built in Lansing and this is the basis for considerable news related to new products, cars, production, personnel and strikes. Oldsmobile was given coverage on the new autos as a part of the GTI news program.

139. Mr. S. Donald Potter testified that during 1959, he aired a news story on the effect of the cash crisis, resulting from the State's fiscal difficulty, on shopping activities in Lansing. Potter had used as an example of the problem, Arbaugh's Department Store. According to Potter, Harold Gross was critical of this Arbaugh's example because this store had resisted becoming an advertiser and thought that Sears would have been a better example. Harold Gross denies any such directive to Potter (Tr. 4339, 4345–46, 2204–07). Potter's veracity has previously been discredited and the GTI bookkeepping records show that Arbaugh's Department Store was an advertiser during the years of Potter's employment (1958-1961) (ACLU Exhibit 216, p. 1).

140. Mr. Potter also testified about Harold Gross directing him to feature financial reports of the Michigan National Bank to the exclusion of other area banks. Potter assigned as the "obvious" reason for this instruction, the Michigan National Bank's status as a GTI advertiser (Tr. 4351–54). The GTI bookkeeping records show two other banks were GTI advertisers during this time—American Bank and Trust Company and East Lansing State Bank (ACLU Exhibit 216, p. 1). Harold Gross denies any such instruction to Potter. The record shows that the Michigan National Bank was the major local financial institution and many times

the size of the other banks in the area (GTI Exhibit 215). As previously noted, Potter's testimony has been discredited.

141. Mr. Potter also testified as to a direction from Harold Gross (1958–1961 time period) to cover the arrival of Santa Claus by helicopter at the location of the Sears store in the Frandor Shopping Center (Tr. 4365–66, 4413). Harold Gross cannot recall the conversation as related by Potter. The Santa Claus helicopter does land at that shopping center and takes kids for a ride with Santa Claus (Tr. 14522–26).

142. Mr. Richard Evans testified that Harold Gross directed him to cover the opening of a jewelry store in downtown Lansing in 1963. Mr. Evans could not recall the name of the store (Tr. 4107, 4196, 4161–63). Evans also could not identify the location of the store or offer any other information and does not know if the store was a GTI advertiser (Tr. 4195–96, 4107). Harold Gross denies he ever gave such an instruction to Evans (Tr. 2203–04). The Chamber of Commerce has no record of the opening of a jewelry store in 1962 or 1963 during the entire tenure of Evans at GTI (Tr. 14568–70).

143. Mr. Bradley G. Bate, TV News Director, July, 1969 to February, 1970, testified that Harold Gross asked him to cover the retirement of the manager of Sears. Mr. Bate said while the story was newsworthy, he did not believe it was worth as much coverage as Harold Gross desired. Bate said a two or three-line story would have been sufficient. Harold Gross said more was required since the individual involved—Mr. Dan Bunting—was a long-time Lansing resident and civic leader (Tr. 2849–51).

144. The GTI coverage of auto speedways was reviewed. The AM radio sales manager had assigned the Spartan Speedway account to Tom Larson, the sports director (Bureau Exhibit 14). Harold Gross wrote a memo to Larson in July, 1969 which advised that GTI stop giving free publicity to the Spartan Speedway. Rather, some effort should be made to get the Onondago Dragway on the air as they were a good customer last year—but not this year. Also, Larson was told to check out the Michigan International Speedway (Bureau Exhibit 15). Harold Gross stated that this is one of the infrequent times a sports reporter had been assigned to a sales account. While he does not believe this is a possible conflict of interest, he admits that this might give rise to a closer review of items to be included in the GTI sports programs.

145. Related to the question of auto racing is a memo from Harold Gross to Robert Kurtz in June, 1972 (Bureau Exhibits 17 and 18). Harold Gross was considering doing a pre-race radio program from the Irish Hills (Michigan International) Speedway until the speedway declined to purchase advertising time for the event (Tr. 8267–68, 8292). It was not possible to determine from the record just how GTI did cover this event. Tom Jones and Such do recall that this particular race was covered (Tr. 7128, 11802-802a). Carl Easlick, who filmed the event and virtually every

other event at the Michigan International Speedway recalls covering the event. All of the witnesses (Kurtz, Jones, Such and Easlick) testified that they received no criticism from Harold Gross for this sports coverage (Tr. 8296–98, 7128–29, 1803–03a, 9431). For the period 1971–1973, Mr. Staudt said he exercised news judgment in airing a story on the speedways (Spartan Speedway, Michigan International Speedway and Owosso Speedway) (GTI Exhibits 53, 53A, 53B; Tr. 8932–44, 9066–85). The bookkeeping records of GTI do not permit any correlation to be drawn between the speedway coverage and advertising by the speedways (GTI Exhibit 53 2d Rev., pp. 1–6).

146. The Martha Dixon program is next considered. This is a program produced by GTI which is basically of interest to women and has been broadcast by WJIM-TV since the mid-1950's (Tr. 6120–21, 6124, 2236). The program attempts, where possible, to use visiting celebrities and newsworthy persons. Often commercial establishments will have one of their representatives in town and they will contact Ms. Dixon and seek an appearance on her program (Tr. 6084–85). Ms. Dixon testified that she tried to decide between what should and should not be classified as advertising on her program. For example, if someone wanted to demonstrate how to make home decorations out of egg shells, she would be invited to appear as a guest. If someone wanted to promote a line of home decorations offered by their organization, this person would not be invited as a guest. Rather, they would be told to purchase advertising time (Tr. 6123–24, 6152–53).

147. In January, 1971, Ms. Dixon wrote a memo to Harold Gross regarding three available interviews. They were suggested by Sears and included author Dorothy Sarnoff; a representative of Winnie the Pooh Fashions and Letitia Baldridge, the Kennedy Administration's Executive Secretary (ACLU Exhibit 40). Ms. Dixon described the possibilities thus: Ms. Sarnoff—"interesting"; Ms. Baldridge—"passe" and Winnie the Pooh Fashions—"certainly commercial". Ms. Dixon requested Harold Gross to advise her if these guests fit into the "category [of] Public Service" (ACLU Exhibit 40). Harold Gross did not agree in every case with Ms. Dixon's evaluations. He believed Ms. Baldridge was "a name, a newsmaker" (Tr. 2232). He said Sarnoff would be a good guest and that Winnie the Pooh was commercial. The record shows that over the next several months, Baldridge and Sarnoff were interviewed as guests and the Winnie the Pooh commercial was telecast (Tr. 2230, 6069–70, 15316). It should be noted that Ms. Dixon's memo to Harold Gross does state that Sears had scheduled these appearances. Dixon said the memo was only intended to convey to Gross that Sears had "suggested" the appearances (Tr. 6084).

148. The next incident is the airing by GTI of the AAA ski and ice fishing reports. In February, 1971, Harold Gross wrote a memo to Mr. Kurtz, the Sports Director and told him to get in touch with George

Olmsted, manager of the Lansing office of the AAA and make arrangements to get ski reports and ice fishing conditions to use on the radio and TV stations. Gross said this could be used live or recorded from the original source (ACLU Exhibit 42). Harold Gross said these reports were worthy of being included in a sports show and his memo to Kurtz had nothing to do with the advertising status of the Lansing office of the AAA (Tr. 15226–27, 15283). Mr. Kurtz disagreed with the Gross judgment of the news value of these AAA reports (Tr. 8299-83-0).

149. GTI called as a witness, Mr. Thomas Freel, the News Service Operations Supervisor of AAA (Tr. 12063) and Mr. Lawrence Paladino, Sports Director of the Associated Press operating out of Detroit (Tr. 12176–77). Mr. Freel said there was more interest in winter sports in Michigan (including skiing and ice fishing) than most other states (Tr. 12080–84, 12113). He said that the AAA skiing and ice fishing reports are quite popular and are subscribed to by AP, UPI and more than 100 radio and TV stations in Michigan, which includes other stations in the Lansing area (Tr. 12109–21). Mr. Paladino also testified as to the popularity of these winter sports and news reports concerning same (Tr. 12178–80).

150. A flower show opening in the fall of 1972 was the subject of testimony. The Barns Floral Shop, owned by Mr. Joe Cavacchione, was opened in a new redevelopment area with a ribbon-cutting ceremony by Mayor Graves (Tr. 14320–21). The news assignment editor, Mr. Clifford Lawrence, informed Mr. Cavacchione and the time salesman handling this account that WJIM-TV would cover the event (Tr. 14320–24). However, on the day of the event, Mr. Lawrence decided not to cover the store opening, but failed to advise Mr. Cavacchione or the GTI time salesman (Tr. 7681). James Gross and Lawrence discussed the incident and it appears there was an agreement that the event should not be covered. But witness Lawrence believed that James Gross "either stated or implied" that the interests of commercial clients should not intrude upon the newsroom unless they were a "major advertiser" that is to say the failure to carry the flower shop opening was alright since it was not a "major advertiser" (Tr. 7679). However, Mr. Lawrence acknowledged that this testimony was in conflict with his prior deposition testimony (Tr. 7697). Lawrence was not a satisfactory witness. After repeated requests to review, correct and sign his deposition, he refused to take any action responsive to such requests. He dismissed the whole affair of his review at the deposition because he found it "too agonizing to read" (Tr. 7641–45, 7711). James Gross stated he never told Lawrence what was Mr. Cavacchione's status as a GTI advertiser (Tr. 15642) and his reference to "major advertiser" was in the context of some major firm in the community what did have news value (Tr. 15643). Messrs. Jones and Stebbins testified that while Lawrence discussed his news operational matters with them, he never brought up the incident of failure to cover the flower shop opening

(Tr. 1432). After this incident, Stebbins testified that James Gross spoke to the sales staff and told them it was not their function to determine what was newsworthy and what was not. He further told them that if the sales staff had any future requests as to news coverage, such requests should be made to him (Tr. 12456).

151. In May, 1972 and August, 1973, there were two news stories on food prices at a time when such prices were escalating. According to News Director, Robert Billman, Harold Gross "suggested" a story on the food business and "suggested" it be someone associated with Meijers or Wrigley (Tr. 10913). Billman selected Meijers and contacted a person in Grand Rapids for the interview. The name Meijers was not mentioned in the story and Billman thought the story had news value. On August 2, 1973, Harold Gross sent a letter to Ray, the Assignment Editor, which suggested another story on food prices and that local stores be used such as Shop-Rite and Krogers (Bureau Exhibit 34). Harold Gross testified he selected the two stories because one was locally-owned and the other was part of a national chain. The news story, as aired, contained no reference to the stores and Ray believed it was a valid news story. Harold Gross said where he has an option to select an advertiser for an interview, he does not consider this improper (Tr. 15233–34). Mr. Howard Lancour said seeking interviews where appropriate with advertisers was a "natural" since GTI had a relationship with these people and thus more likely to be responsive and cooperate in giving a statement (Tr. 10104–05).

152. Meijers opened a new store at Jackson, Michigan in August, 1973. Meijers operates a very large chain of department stores and this was their first store at Jackson (Tr. 15652). Mr. Sherck handled the Meijers advertising account and he talked to Tom Jones about obtaining coverage of the store opening. Sherck made this contact in advance of the actual date as he was to be away on vacaton, and, there were specific times of the day when Mr. Fred Meijers would be present at the opening—the thought being the opening should include coverage of Mr. Meijers. It was decided to cover the event and the time for a press interview with Mr. Meijers was confirmed. On the day of the event, Chief Photographer Robert Bishop was assigned to cover the story by James Gross (Tr. 15645–46, 15654–55, 2647–48). Without notice to Meijers, the news crew did not show up for the scheduled press interview (Tr. 2649). A news crew did show up later that day but they did only a 25-second story, using silent film (GTI Exhibit 69, pp. 6–7). James Gross believed the entire story was poorly done (Tr. 15663–64). This matter occurred at the same time as the NABET organization of the GTI newsroom occurred (ACLU Exhibit AL-9). Bishop said he refused to do the story because it was a "stroker" (Tr. 2647, 2650). Bishop said he had never been called upon by GTI to do a store opening as news and he believed this was all part of a GTI attitude of accommodating Meijers (Tr. 2647, 2650). James Gross said his directive to Bishop was

based on his view of the news value of the story and he told Bishop this (Tr. 15654–55).

153. This direct conflict of testimony must be viewed in the light that James Gross had previously supported the news department on decisions to cover or not cover department store openings (K-Mart and Woolco) (Tr. 15684–85, 7156). Also, after Bishop terminated his employment at WJIM-TV, he went to Ststion WWTV-TV, Cadillac, Michigan. He said he had not been engaged there in any such "ribbon-cutting" news stories. The news director of WWTV-TV appeared as a witness and he said 30–40 such stories were done during Bishop's employment at WWTV and there was no protest from Bishop.

News and Editorials Involving GTI's Interests

154. Editorials were a regular part of GTI programming since approximately 1960 (Tr. 14980–81, 4414, 14337). The issue here is to determine if GTI or its principals used the editorial as a device to further its own private interests. A matter not involved herein, but closely related, is the Commission decision that where a licensee does have any private interest in a matter that is the subject of an editorial, this fact must be stated. *Gross Telecasting, Inc.*, 46 FCC 2d 543 (1974). See also *Gross Telecasting, Inc.*, 48 FCC 2d 1186 (Rev. Bd. 1974).

155. The GTI 1969 edition of its operations manual stated the GTI policy of aggressive editorials, but, required that all editorials be approved in advance by the General Manager.[35] Certain editorials were examined in this record based upon these private interest considerations, together with certain news coverage that may also involve the private interests of GTI.

156. Harold Gross sent a memo to Messrs. Dansby and Boone suggesting that the local CATV situation be kept in the news. Harold Gross testified that he believed this was newsworthy because applications were then under consideration, and, the public did not know what CATV was, since it was then a new concept. The City Council had the matter under consideration and GTI did not run its two CATV editorials until after editorials against CATV had been run by Stations WILS and WITL as well as a five-part series of articles in the *State Journal* (GTI Exhibit 60, pp. 16–23, 24–29). Mr. Moore was invited to respond to the GTI editorials but he declined (Tr. 3803–05, 3798). It is Harold Gross' testimony that his memo was only a suggestion—not an order (Tr. 1807). Mr. Dansby testified that he did not recall the memorandum on CATV coverage. Dansby did recall news coverage over GTI as being a "public issue" and a viable subject for news. Dansby also recalls that entities other than GTI were

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[35] The record leaves little doubt that Harold Gross assumed an active role of supervision in this area.

also providing news coverage to CATV (Tr. 9365, 9754–55). Mr. Boone, like Dansby, does not recall receiving the memo on CATV but recalls that CATV was a legitimate news story during this period (Tr. 9990). Mr. Michael Wright was on the television news staff and was the Acting News Director at various times from 1966 to 1968. Wright stated that CATV coverage on GTI during this period was based on his news judgment and there was no interference from Harold Gross.[36] Wright does recall that other franchise applicants were given coverage over GTI.

157. Introduced into evidence by ACLU are the GTI scripts of the following news stories:

> A brief news report at 6:00 P.M. in January, 1971 relative to the first CATV residential installation by Capital Cablevision (owned by GTI) in Lansing Township (ACLU Exhibit 93).[37]
>
> A brief (Vol. 71, Tr. 10138) interview at 11:00 P.M. of a Lansing Township CATV customer in March, 1971 (ACLU Exhibit 97).
>
> A report at noon and 6:00 P.M. on May 5, 1971 that the United States District Court had stricken the Lansing CATV ordinance as unconstitutional, and that the Lansing City Council had scheduled a special session that afternoon to consider the implications of the Court ruling. The noon script refers to CATV operations of Capital Cablevision and National Cable in Lansing Township and East Lansing respectively (ACLU Exhibit 109).
>
> A report at noon the following day (May 6, 1971) that the Lansing City Councilmen had adopted a new ordinance to correct the deficiencies cited in the Court ruling (ACLU Exhibit 110).
>
> A report on July 16, 1971 at 6:00 and 11:00 P.M. relative to the City Attorney's ruling that Mr. Moore was in conflict of interest which could be removed only by his resignation from the City Council or from his association with one of the applicants for the CATV franchise (ACLU Exhibit 116).
>
> A report on July 19, 1971 at noon that Mr. Moore was expected to answer the conflict of interest charges that day (ACLU Exhibit 117, p. 1).
>
> Stories on July 19, 1971 at 6:00 and 11:00 P.M. featuring a sound-on-film interview with Mr. Moore, who disputed the City Attorney's ruling and rejected all of the options given him by that ruling (ACLU Exhibit 117, pp. 2–5).
>
> A report on July 20, 1971 at noon relative to the views of Mr. Moore and the City Attorney on the conflict of interest ruling (ACLU Exhibit 118).
>
> In April, 1972 a brief story at 11:00 P.M. relative to Capital Cablevision's utility pole authorizations to extend CATV service in Lansing Township (ACLU Exhibit 142).

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[36] During this period, GTI or Harold Gross was one of many very active applicants for a CATV franchise from the City of Lansing, Michigan. The entire matter was then under active consideration by the City Council.

[37] In some of the scripts, GTI's ownership of Capital Cablevision is identified (ACLU Exhibit 142) and in others it is not (ACLU Exhibits 93, 97, 109, 110).

158. Mr. Howard Lancour was the television News Director when these stories (except the April, 1972 item) were telecast. Mr. Lancour said he received no directives from anyone not to cover these stories and the coverage was on the basis of his news judgment (Tr. 10105–07, 10014–17). Mr. Robert Billman was News Director at the time of the April, 1972 story. Billman stated he does not recall the circumstances on the carriage of this story,[38] but believes that GTI issued a news release which the news department saw fit to use (Tr. 10908).

159. In view of nine CATV stories placed into evidence by ACLU, GTI offered into evidence summaries of all of the 71 scripts of television stories relative to CATV developments in Lansing, East Lansing and other Michigan communities (GTI Exhibit 46). This appears to be on-going coverage with no undue mention of the Capital Cablevision application *vis-a-vis* the other applicant (Tr. 11676–77).

160. The Pear and Partridge Restaurant which was constructed and operated by Harold Gross at the Lansing airport was the subject of considerable publicity (Tr. 10736–37). This takes place during the time period 1967–1968 and records of exactly what happened are not available.

161. Mr. Michael Wright was employed in the GTI television news department throughout this period and he gave coverage to the restaurant opening on his own, because he believed it to be a newsworthy story (Tr. 10654–55). There was also a related dispute between Gross and the Michigan Aeronautics Commission relative to the Pear and Partridge Restaurant. The restaurant was in the airport terminal building and the Aeronautics Commission had control of the building. Wright stated he never received any criticism or directives relative to such coverage from Harold Gross (Tr. 10586).[39]

162. There was a directive from Harold Gross which provided a list of 12 companies on which stock reports were to be broadcast in the business section of the news. GTI was not included in this list of 12 companies (Tr. 9643–44). GTI would on occasion, issue press releases which were circulated to all news media in the city, including the WJIM news staff (Tr. 10536). One of these GTI press releases involved GTI's purchase of WKBT, La Crosse, Wisconsin. Andrew Such said he prepared a "very factual" story on this GTI press release (Tr. 10535–37). Harold Gross reviewed the script but made no changes (Tr. 10535).

163. Harold Gross stated that in the past he had been critical of the GTI news staff for giving too much publicity to the WJIM basketball team, particularly on television (GTI Exhibit 112).

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[38] Capital Cablevision was the name GTI was using in its application for the CATV franchise.

[39] The Harold Gross operation of the restaurant at the airport resulted in considerable charges and counter-charges on the responsibility for various problems encountered by the new restaurant.

Clipping and Clipping Misrepresentation

Introduction

164. The Review Board by *Memorandum Opinion and Order*, 48 FCC 2d 1186 (1974) enlarged the issues in this proceeding as follows:

> To determine whether Gross Telecasting, Inc., engaged in the "clipping" of television network programs and, if so, to determine the effect thereof on its qualifications to be a Commission licensee.

The burden of proceeding on this issue was placed on ACLU and the burden of proof on GTI.

165. Next, the Review Board added further issues which are part of the overall clipping inquiry by *Memorandum Opinion and Order*, 55 FCC 2d 76 (1975) which issues are:

> (a) To determine whether, in connection with a letter submitted to the Commission on March 25, 1971, Harold F. Gross and/or Gross Telecasting, Inc. made misrepresentations, lacked candor, or failed to ascertain the true facts with respect to the "covering" of network programming by local material on station WJIM-TV; and
>
> (b) To determine, in light of the evidence adduced pursuant to issue (a) above, whether Gross Telecasting, Inc. possesses the requisite character qualifications to be or to remain a licensee of this Commission.

The burden of proceeding on these two issues was placed on the Bureau and the burden of proof on GTI. Since all three of the above issues are related to the same subject matter, they will be considered together.

WJIM's Relationship with CBS

166. WJIM-TV went on the air in 1950. It was then the only TV station in the Lansing market, and at that time had agreements with all three major networks to carry their programming. By 1958, WJIM-TV was offered an exclusive CBS affiliation, which it accepted (Tr. 21206–08). The first CBS-GTI television affiliation agreement was dated April 1, 1958 (ACLU Exhibit DDD). On June 6, 1958, Mr. Edmund C. Bunker, the CBS vice president in charge of affiliate relations wrote a form-type letter to all CBS affiliates concerning network clipping. The letter stated that CBS had received complaints in which affiliates had taken time purchased by network advertisers and substituted commercials for local advertisers. Mr. Bunker's letter noted that such practice was "obviously unfair to the sponsors of the network program, and is unfair to the CBS television network, which represented to the advertiser in all honesty that it would make available the full time period contracted for." (ACLU Exhibit C, p. 1). Mr. Bunker also indicated that the matter was becoming one of general

concern to advertisers and he gave some examples of unauthorized deletions which included the expansion of station breaks.

167. The June 6, 1958 letter requested that each CBS affiliate execute an amendment to the affiliation contract which amendment was attached to the letter. The amendment was said to state "expressly, the understanding which has always been implicit in regard to carrying network programs." The letter also advised of a change in the affiliates' weekly report form sent to the CBS Accounting Department as to the programs carried. The following language was added at the head of the Remarks Column in the report form:

> If, for any reason, a program is not broadcast in its entirety by a station during the respective time period or periods, state below the exact timings (minutes and seconds) of all parts not broadcast and the reason or reasons for such failure to broadcast. (ACLU Exhibit C, p. 2);

Page three of the June 6, 1958 letter was an affidavit form which the person responsible for the weekly affiliate compensation reports sent by the station to the network. Accordingly, the affiliate—such as WJIM-TV—was required to state under oath that the report was complete as to all CBS programs carried, except as noted in the remarks column. Each program was to be broadcast "in its entirety (including, without limitation, commercial messages, credits and network identifications) by the station during the stated time period."

168. The amendment to the affiliation contract as attached to the June 6, 1958 letter is as follows:

> Station will not broadcast any network sponsored program unless such program is first offered by CBS Television to Station and is accepted by Station by notice to CBS Television. Station agrees that, except with the prior consent or at the request of CBS Television, the Station will not delete any part of any network program offered to and accepted by Station but will broadcast each such program in its entirety, including, without limitation, commercial messages, credits and network identification. For purposes of the preceding sentence, each segment of a network program offered in segments shall be considered a separate network program. Nothing herein shall be construed as limiting the rights of Station under paragraph 3 hereof or preventing the deletion by Station of (a) part of a network program during an emergency announcement, (b) a promotional insert for a network program not carried by Station, or (c) that part of a network program not terminating on schedule that continues beyond the scheduled termination. (ACLU Ex. C, p. 5).

Harold Gross signed and accepted the amendment to the affiliation contract on behalf of GTI and returned it to CBS (ACLU Exhibit DDD).

169. The network policy as set out in the June 6, 1958 amendment continued into the early 1960's (Tr. 19791–92). A subsequent television agreement between GTI and CBS became effective on November 15, 1966 and contains the following language:

> Affiliated Station shall not broadcast any commercial announcement or announcements during any interval, within a Network Program which is designated by CBS to Affiliated Station as being for the sole purpose of making a station identification announcement. Broadcaster shall, with respect to each Network Program broadcast over Affiliated Station, broadcast such Network Program in its entirety (including, but not limited to commercial announcements, billboards, credits, public service announcements, promotional announcements, and network identification) during the entire length of the time period for the network program as offered to broadcaster by CBS. Nothing herein shall be construed as preventing Broadcaster's deletion of (i) part of a Network Program in order to broadcast an emergency announcement or news bulletin; (ii) a promotional announcement for a Network Program not to be broadcast over Affiliated Station; (iii) that part of a Network Program that continues beyond its scheduled termination; or (iv) such words, phrases, or scenes as Broadcaster, in the reasonable exercise of its judgment, determines it would not be in the public interest to broadcast over Affiliated Station; provided, however, that Broadcaster shall not substitute for any material deleted pursuant to this clause (v) any commercial or promotional announcement of any kind whatsoever; and provided further that Broadcaster shall notify CBS of every such deletion within 72 hours thereof. (ACLU Exhibit B, p. 4).

Mr. Harold Gross for FTI also signed this contract with CBS (ACLU Exhibit B, p. 6).

170. Mr. Harold Gross was elected to a three-year term (1967–1970) on the nine member CBS Affiliates Board. On the expiration of the three-year term, Mr. Gross was appointed to the five member executive committee of the board on which he served until 1973. Discussions of the Board and the executive committee generally centered around affiliate demands for more compensation or commercial availabilities from CBS. Various ways of increasing the compensation were explored at length. (Tr. 21208–09 and 21215–19). Mr. Harold Gross personally decided what CBS programs WJIM-TV would carry. (Tr. 20783–84).

171. Thus, since at least the early 1960's, CBS sent to each of the CBS affiliates, including WJIM-TV, a television network station report which contained an affidavit in the form attached to Mr. Bunker's June 6, 1958 letter to all affiliates (ACLU Exhibit C). Such reports are commonly referred to as a compensation or "comp" reports (Bureau Exhibit LLL, Tr. 21055). The "comp" report as received by the CBS affiliate is a preprinted listing of CBS programs for the week involved together with the beginning and ending times rounded off to the hour and half-hour—so-called straight up and down times (Bureau Exhibit LLL). In addition to the provisions of the affiliation contract and the statements on the comp reports, CBS sent instructions to its affiliates approximately once a year to remind them to note on the "comp" reports the exact time of any interruptions and state the reasons for any changes on the report (ACLU Exhibit A, Tr. 19740 and 19745).

172. WJIM-TV received its CBS network feed via AT&T facilities and GTI had a contractual relationship with AT&T for this service (Tr. 19246). Absent some unusual circumstance, WJIM-TV receives its network feed

instantaneously upon transmission by CBS (Tr. 11264). The network transmissions to WJIM-TV are controlled as to what is actually broadcast by WJIM-TV by a series of buttons and switches in the WJIM-TV master control room. The operator on duty at the WJIM-TV master control room can view several TV monitors, one of which shows the program material from the network as delivered over the AT&T facilities (Tr. 19247–48 and 20121).

173. In late spring or early summer of each year, CBS would provide its fall line-up to WJIM-TV. Included with the fall line-up of CBS programs would be information on the station break pattern for each of the fall network programs. The break patterns established by this schedule rarerly changed from week to week, provided the listed programs were carried. (Tr. 19638–40 and 20546–47). On occasion the fall schedule as established by the network at the beginning of the season was not followed. There were changes in the station breaks with regard to certain programs, such as movies. There was a continuing flow of teletype information from CBS to GTI concerning special situations on station breaks (Tr. 19638–40). In addition, WJIM-TV would also receive prior to broadcast, specific information regarding the length of network promotional announcements. GTI did not receive information from CBS on the length of credits within network programs (Tr. 19647–48).

174. The break schedules provided by CBS would permit GTI to determine the time available for local commercials over WJIM-TV (Tr. 20547). Also for the WJIM-TV prime-time programs, there was an availability schedule or "avail sheet" which WJIM-TV salesmen used to learn the number of availabilities left for sale (Tr. 19627). GTI did not attempt to keep track of availabilities in CBS programming after 11:30 P.M., or during daytime programming (Tr. 19705).

175. The WJIM-TV program logs were prepared three days in advance of the day of broadcast (Tr. 19708). From 1963 to 1975, Jack Colegrove was the GTI official responsible for preparation of the logs and the "avail" sheet. Mr. Colegrove had been aware since 1963 that GTI scheduled TV commercials in excess of the time allotted by the network (Tr. 19623–25). Colgrove received instructions on the mechanics of log keeping by Ms. Gail Bloore who told him why and how it was done (Tr. 19622–26). Mr. Sherck was Mr. Colgrove's immediate supervisor and he was aware of WJIM-TV's extended station breaks that inserted extra local commercials. He had been aware of this practice since the time he entered the traffic department in 1958 (Tr. 20795–96).

176. Mr. Sherck had, since 1964, also been the GTI official responsible for certifying the comp reports to the CBS network (Tr. 20785–87). From 1964 until September, 1972 the procedures followed by GTI in filing its comp reports was for the accounting department to place a check mark next to a program listing on the comp report if it was aired by WJIM-TV.

The comp report was then forwarded to Mr. Sherck for his signature usually without the WJIM-TV program logs. Sherck as indicated *supra* knew that WJIM-TV did extend station breaks and added extra local commercials. In 1972 when there was a revision in this procedure, considered *infra*, Mr. Sherck said "That's the way its been done for 15 years." (Tr. 21147). Mr. Sherck would routinely sign comp reports prepared with the check mark procedure. Such reports had the effect of certifying to the network that the CBS programming as checked in the comp report had been carried in their entirety, that is to say as defined in the CBS affiliation contract (Tr. 20379, 21056–57 and Bureau Exhibit LLL, p. 2).

177. GTI's practice of overscheduling commercial breaks increased in the late 1960's because of an increase in demand by advertisers for time. Overscheduling also depended on the time of the year and time of day. The heaviest times of the year were the periods October through December and March through April. (Tr. 19645 and 21205). The expansion of network breaks was a decision generally made by Mr. Colegrove, but, occasionally Mr. Sherck would make the decision (Tr. 19695–96 and 20795–96). The extended breaks would vary from 10 to 30 seconds, and, on rare occasions, one minute. Normally, the extended break would occur at the end of a program as it was desirable for a program to start at the beginning and the break would appear smoother at the end of the program. The network programming normally deleted would be the promotional announcements, credits, billboards and sponsorship identification announcements. There was also an expansion of breaks in the middle of a program. CBS would provide WJIM-TV with a weekly schedule of the promotional breaks and further changes would be noted in TWXs. Mr. Colegrove would use the weekly schedule in making up the WJIM-TV log, but, TWX changes were generally disregarded (Tr. 19646–48, 19710 and 20321).

178. A CBS affiliate like WJIM-TV would know a network program had ended when the CBS "eye" logo appeared. The master control room operator could then cut away from the network for the station ID and whatever else could be fitted within the authorized break time. However, GTI had prepared its own CBS "eye" slide and when an expanded break was required, the phrase "CBS ID Slide" would be typed on the WJIM-TV log. This would alert the operator on duty that he would have to leave the network early in order to run the local ID and all schedule local commercialsl.[40] The operator on duty upon seeing the GTI log notation, would leave the network early, air the WJIM-TV copy of CBS "eye" logo and run all the commercials scheduled on the WJIM-TV log before rejoining the network. The use of the slide by WJIM-TV provided an orderly transition between the network and the expanded break as the

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[40] Bureau Exhibit LLL, p. 1 contains an example of this practice.

use of the slide would permit a network cut away for example at the end of a sentence just prior to the first local commercial (Tr. 19381–82, 19650–51, 20162 and 20796–97). This problem of a clean break from the network to insert an extra 20 or 30 seconds of commercial time[41] was the subject of complaints by master control room operators. Mr. Argel Resler said it was difficult to leave the network cleanly, run the extra commercial matter, and rejoin the network. He complained to Carl Onken, the WJIM-TV Chief Engineer, Phil Sherck and Jack Colegrove. All of the engineers complained about the practice. But the operators continued the practice where extra commercials had been logged as their responsibility was to follow the log (Tr. 20183–84 and 20190–95).

179. Colegrove estimated that in prime time during the heavy periods of 1969–1971 over 50% of the breaks were overloaded (Tr. 19648). Jones' estimate for these same years during mid-September to mid-December was that 70–75% of the prime time breaks were extended (Tr. 19388–89 and 19505–06).

180. Mr. Harold Gross sent a memo to Phil Sherck with copy to Master Control on August 18, 1969 that was critical of taking one minute for commercials and then joining the Sunday night news late. Mr. Gross was of the mistaken view that the network had authorized only a 42-second break. However, Mr. Gross directed that if this happens again, WJIM-TV logs should provide for a cut away from the preceding program on the credits and join the following program on time. Mr. Colegrove answered the memo. He advised that the network authorized a 72-second break and the WJIM-TV log was correct, i.e., it showed two 30-second commercials, a 10-second announcement and a two-second station ID. The difficulty here was that the ID also included a promo for the Merv Griffin show which used a total of maybe 7 seconds. However, Mr. Gross, based on a mistaken belief as to the length of the authorized network break, did suggest that the credits be eliminated from the previous program (Bureau Exhibit D, Tr. 19653–54 and 20193–94).

181. In November, 1969, Tom Jones told Harold Gross that WJIM-TV was clipping. It appears that prior to the November audience rating period, Gross asked Jones, then WJIM-TV's Operations Manager, to help prepare some WJIM-TV promotional announcements. The announcements were prepared, but, as the rating period began, Jones noticed his promo announcements were not being aired. Jones then checked about one week of logs and determined that because of the heavy commercial load on the station, there was no room for his promos and that some of the network promos were being clipped because of the local commercial load.

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[41] Cutting out 10 seconds early presented no problem to the operator (Tr. 20191). The CBS logo would usually appear for about 10 seconds so the operator would cut out immediately on seeing the logo. (Tr. 20166).

Jones then decided that the only way to resolve this was to send a memo to Harold Gross (Tr. 19265–67). On November 12, 1969, Jones wrote Harold Gross:

> I simply want to reiterate that during this most important rating period we have had absolutely *no* promotional announcements on our own station—the strongest medium in the market.
>
> Furthermore, we have been cutting out of virtually every CBS prime time program early which means we have been clipping or eliminating the most important network promotion spots.
>
> Also we have been scheduling longer breaks in Merv Griffin than the network provided so that frequently we join the program after guests have been introduced and the result is obviously choppy and confusing.
>
> Each of these problems and all of them together are bound to have a serious effect on our rating.
> (Bureau Exhibit F)

The Merv Griffin Show was a CBS network program which commenced at 11:30 P.M. and ceased to be a network show in February, 1972. Since then the network presents the "CBS Late Movie" (Tr. 20328–29). Much testimony appears in the record concerning GTI policies on end breaks, mid breaks and breaks during the program. It is Mr. Jones' testimony that the breaks in the Merv Griffin Show were overscheduled, but, not in excess of 30 seconds (Tr. 19276–77 and 19399). Mr. Jones defined an end break and mid break as having the same characteristics, i.e., the network would have the usual type of "promos" and other material followed by the system cue (the CBS eye). A break during the Merv Griffin Show would perhaps occur four or five times during the show and is simply designed to give the local stations the total allotted time for their spots. There is no cue to such breaks other than Merv Griffin would say something like "we will be back in a minute" (Tr. 19276). According to Mr. Jones, the matters dealt with in his November 12, 1969 memo decreased over a reasonable period of time, but, only to spring up again from time to time (Tr. 19398).

182. GTI had its own local news show scheduled between 11:00–11:30 P.M. and much of the testimony dealt with the cut away from the network at 11:00 P.M. and the necessity that the WJIM-TV 11:00 P.M. news show use a full half hour and more under certain circumstances. On March 6, 1970, Mr. Harold Gross announced a policy authorizing late joins of the Merv Griffin Show under certain conditions (Bureau Exhibit I). According to Mr. Gross, CBS would run their movie on Thursday and Friday nights beyond 11 P.M. but start the Merv Griffin Show on time, i.e., 11:30 P.M. Mr. Gross notes in his memo that on March 5, 1970 the entire news show (11:00 P.M.) had only about 20 minutes because of the network schedule. Thus, he ordered the news to use the full 30 minutes even though Merv Griffin is joined late on such occasions. The procedure was to

announce a late join and then display a Merv Griffin slide[42] until a clean entry could be made into the program in progress. Tom Jones, on the same date, instructed Sherck and Colegrove that the log prepared by the traffic department should reflect this new policy (Bureau Exhibit J). Mr. Colegrove followed these instructions (Tr. 19654–56). This policy was expanded on May 13, 1970 to include a late join of the Merv Griffin Show because WJIM-TV carried an extra long editorial (Bureau Exhibit K). At this time (1968–1971), GTI carried editorials three times a week. Mr. Jones wrote the editorials and they were edited and approved by Harold or James Gross. Approximately 10–15 percent of the editorials ran longer than the two-minute average (Tr. 19401–08). In this memo, Mr. Harold Gross divided the 11:00–11:30 P.M. WJIM-TV program into three segments—news, sports and weather. There was to be no cutting the news segments but taken off the sports and weather ". . . or we can join Merv Griffin late." (See also Bureau Exhibit FF, Tr. 19401–08, 21347–48, 21437–39 and 21228–35). Mr. Harold Gross believed that the Merv Griffin Show provided several times when a "clean [late] join" could be made (Bureau Exhibit K). Thus, when the Merv Griffin Show was joined late, the Merv Griffin slide was used for about 10 seconds prior to the actual join. Mr.Harold Gross authorized use of the slide in this manner and compained when it was not used prior to a late join (Tr. 19301–02). Mr. Harold Gross was aware that the Merv Griffin Show was not being joined on time and this appeared to be an every night occurrence. Mr. Gross believed that a major cause of this was improper preparation and ad libs by the news staff which caused the run overs (Bureau Exhibit O and P). Harold Gross had a firm policy that the 11:00 P.M. local news show should take a full half-hour. However, in addition to the problem of concerning the news show on time, there were difficulties in starting this show on time. Brad Bate was the producer and anchorman of the 11:00 P.M. news show from July, 1969 to March 1, 1970. Mr. Bate would clip the CBS programs which ended at 11:00 P.M., particularly on Thursday and Friday nights when CBS aired movies. GTI would have several commercials scheduled between the end of the movie and the start of the news so the 11:00 P.M. news would not start until a few minutes after 11:00 P.M. Bate wanted the full half-hour for his news so he arranged with the director of news programs to cut away from CBS early by clipping some network promotional announcements. By this means the GTI commercials could be accommodated and the news could start closer to 11:00 P.M. On the Thursday and Friday CBS movie nights, Mr.Bate could pick up an extra two to four minutes by eliminating the network promotional announcements. Other nights of the week, i.e., non-movie nights, Bate could gain only a few seconds by eliminating the network promos. All of this was accomplished by leaving the network early and before the CBS "Eye" logo appeared which was the network signal that the show was completed. Mr. Bate cut away from the network early on movie nights about 75% of the time. GTI management, according to Mr. Bate, never questioned him or issued any reprimand for the procedures followed by Mr. Bate (Tr. 19514–16 and 19524–27).

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[42] This slide was also prepared by GTI and was used in a similar fashion to the GTI "eye" logo slide.

183. On August 13, 1969, Mr. Harold Gross sent a memo to Mr. Bate (Bureau Exhibit C) directing that WJIM-TV do a live cut-in with short news headlines at 10:00 P.M. or 10:30 P.M. to promote the local GTI 11:00 P.M. news. Mr. Gross noted that after Mr. Bate gave the four or five most important news headlines, he should close with "details on these stories and other news in thirty minutes on Six Star Final." Mr. Bate followed the orders given in the August 13th memo and did a live 20-second news promo thereafter. Mr. Bate could not be specific as to just what network programs were cut as a result of this GTI practice but noted that when network programs were clipped it would be the credits of the end of a program or the system cue, i.e., the CBS eye. Sometimes the 20 seconds could be worked in without any cut of the network which occurred when the network authorized station break time was not sold out by GTI (Tr. 19516–18, also see ACLU Exhibit W (amended) p. 5, lines 3, 14 and p. 10, line 14).

184. Sporting events and special events carried by the network were clipped during the period 1969–1971. Such special events were sold at a premium price (Tr. 19603). During this time period, Mr. Harold Gross was actively engaged in selling time for GTI and he had a number of advertisers who were to be told of special events so they could purchase time (Tr. 19642–43). According to Witness Bate, in August or September 1969, there was a department head meeting on the oversold local availabilities. The meeting was attended by Messrs. Bate, Sherck, Jim Gross and perhaps others.[43] It appears that Mr. Harold Gross had sold a local spot during the network Sunday NFL football game which would be carried 13 or 14 weeks. There was no room for this spot in the time made available by the network, so it was decided at the department head meeting that some time had to be found within the telecast of the game. The added commercial could not take place during actual play action because the risk was too great for missing a play and Mr. Harold Gross did not want to interrupt the plaything of the National Anthem. Given the ground rules for where to insert this extra 30-second commercial,[44] the group decided that Tom Jones should be present at the station and supervise where the extra commercial should be inserted. Mr. Tom Jones placed the commercial just after the National Anthem in the pre-kickoff part of the game and then

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[43] The word "others" as used here specifically excludes Harold Gross and Tom Jones (Tr. 19509).

[44] Mr. Jones believed it was a 60-second commercial (Tr. 19309).

rejoined the network after a clean break. Mr. Jones' actual instructions for this came from either Harold or James Gross. Mr. Jones, after establishing the procedure for the extra commercial the first time, did not return to the station on succeeding NFL Sundays as the pattern was then set as far as he was concerned on how and when to do it (Tr. 19510–14). Mr. Tom Jones has recollections of the meeting which vary from those of Mr. Bate. Mr. Jones recalls the meeting was a regular Monday morning department head meeting which took place in August, 1969. Mr. Sherck brought up an availability problem, i.e., the need to insert commercials above and beyond the time made available by the network. Mr. Jones did not believe the network was CBS but, rather the pre-season Detroit Lions network. The meeting ended with the problem being aired but not resolved. Subsequently, either Harold or James Gross told Jones, either in writing or orally, to find some way to get the extra 60-second commercial into the pre-game part of the telecast. Mr. Sherck sent a memo to Jones on October 23, 1969 (Bureau Exhibit E) reminding him that there would be an extra spot in the Monday night NFL game and Sherck presumed Jones would supervise insertion of the extra commercial, as he had in the past (Tr. 19307–11). Mr. Sherck recalled his memo to Mr. Jones (Bureau Exhibit E) and Sherck stated he wrote the memo because "the boss" was not happy with the way WJIM–TV was executing the breaks in the NFL football games and Jones had been assigned this job. (Tr. 20347–48).

185. Harold Gross was asked about extra spots in the NFL games. He said the station may have run over 20 or 30 seconds at the half-time break and has always been confused about any extra spot prior to kick-off. As Gross recalls, there was an authorized 72-second network break prior to the kick-off and he has no knowledge of running over allotted time. He does not know if it ever happened, i.e., 1969–1970 NFL season, but, normally GTI would sell two 30s and a 10 in the 72-second authorized break (Tr. 21246–47).

186. Mr. Harold Gross admits that GTI would expand the network break 20 or 30 seconds during the half-time NFL break (Tr. 21246). On December 28, 1970, Mr. Harold Gross sent a memo to master control room operators. He noted that during the previous Sunday's NFL game the local commercials interfered with a rejoin of the game and an entire play was missed. Mr. Gross' solution was that "[w]e can pick up valuable time by cutting away earlier instead of rejoining late." (Bureau Exhibit U).

187. John Cundiff was the local TV sales manager for GTI from about May, 1970 to June of 1972 and he supervised about four employees in this capacity (Tr. 19571). As such, Cundiff handled regional and local sales, and national sales were under Sherck and James Gross. Cundiff would be in daily contact with the GTI TV traffic department (Sherck and Colegrove) to determine the inventory of availabilities still unsold (Tr. 19572). As TV sales manager, Cundiff would report to Harold Gross (Tr. 19577). Cundiff

recalled one conversation with Harold Gross on the Sunday football game which occurred in the fall of 1970 or 1971.[45] Harold Gross and Cundiff were passing in the hall just in front of Colegrove's office and Harold Gross said something to the effect that we should be pushing this stuff, i.e., Cundiff and his staff should sell more local and regional commercials for the football broadcast. Cundiff had already determined through the traffic department that the game was sold out and he so advised Gross. At this point, Gross turned to Colegrove and said "You know, we will put more spots in the football game." Gross then turned to Cundiff and told him to "continue to sell it. We will make the availabilities." (Tr. 19579–80). Cundiff then advised his staff to start selling spots for the football game. He does not know if additional spots were sold, but, he tried (Tr. 19582). After Cundiff ended his employment in June, 1972, he went to work for another TV network affiliate serving much the same market. Cundiff believed that both networks, i.e., NBC and CBS, offered their affiliates the identical amount of time for local sales. However, it appeared that GTI had more time to sell than he was authorized and that some network programming was being cut. Sometime in 1973, Cundiff stated he telephoned Tom Jones at GTI to talk to him about this. Jones had lunch with Cundiff and Cundiff was advised by Jones that the practice of GTI leaving the network early and rejoining late, had been discontinued and GTI had notified the network of this. Cundiff was satisfied with Jones' answer (Tr. 19591–96). While Cundiff was employed at GTI, three types of time were sold namely, Section 1 (firm time); Section 2 (pre-emptible) and ROS (run of schedule) (Tr. 19610–12). ACLU Exhibit W (amended) shows four examples of expansion of breaks during NFL games in the fall of 1970. CBS programming was deleted for an additional 30-second GTI commercial, but this was not reported to the network (ACLU Exhibit W (amended) p. 64, lines 13–15, and p. 65, lines 1–5).

188. Other special events programming were the subject of extra local commercial breaks. For possibly three or four years[46] GTI would create a break on the half-hour of the Thanksgiving Parade (Tr. 19711–13 and 20824). When GTI received network confirmation on the air time for the parade Harold Gross would discuss with Scherck the creation of an extra break on the half-hour to fulfill their commitments to non-network advertisers. Harold Gross was of the view that the network did not provide a sufficient time for station break opportunities (Tr. 20824 and 21250) and that the parade was "float after float and description of things from Philadelphia, Detroit—where else?" Similar breaks were created by GTI during the network feed of the Apollo space shot which preempted a local

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[45] It appears elsewhere in the record that Harold Gross was ill and absent from the station for substantial parts of 1970 so this conversation probably took place in 1971.

[46] The record does not permit the actual years to be identified.

GTI program (Martha Dixon Show). The local break was created in the opinion of GTI so as not to delete anything important from the telecast (Tr. 21253–54). Another situation was the Kentucky Derby in which local GTI breaks were inserted because this network program lasts one hour, the race takes one minute and fifty-eight seconds and there is 56 minutes of fill material (Tr. 21254). Mr. Gross justified this practice, in his own mind, during this period because he believed clipping was an interruption which interfered with the body of the program, the program itself, the race, play-by-play. However, none of this according to H.F. Gross, was interrupted, only fill material was deleted when WJIM–TV took its station breaks (Tr. 21254).

189. During the November 3, 1970 network coverage of election returns, it was provided that local network stations, such as WJIM–TV, could cut away for seven minutes each half hour for local returns and interviews with candidates. However, GTI overran its local allotment of time (Tr. 20422). Based on the ACLU Exhibit W (amended) WJIM–TV overran its network allotted time on 13 occasions that evening and joined the network late by as much as 9 minutes, 20 seconds. Local commercials were aired during the period of the deletions and portions of the CBS network programming including commercials, were deleted. Except for one such deletion by WJIM–TV, none of the other deletions were reported to CBS (ACLU Exhibit W (amended), p. 8, lines 2–15; p. 9, lines 1–3).

190. In addition to the network agreement with CBS, GTI had an informal arrangement with the Hughes Sports Network. Mr Jay Moran, Eastern Regional Station's Relations Manager for this network from September, 1969 to April, 1976 testified as to the nature of agreements between the network and local stations. For example, if a station called several weeks before a scheduled network program and requested more time for local breaks, he would authorize local stations, such as WJIM–TV, to cover unsold spots, promos, and free spots given to its network clients. It was Moran's "way of doing a station a favor" and created a feeling of obligation to him for the next time he asked a local station to carry one of the Hughes Sports Network programs. Even if the Hughes network had a particular program sold out, Moran would still authorize the expansion of station breaks (Tr. 20998 and 21008–09). ACLU Exhibit W (amended), p. 66 shows five instances during February and March, 1971 where GTI had expanded its breaks during Hughes' programs. A review of the ACLU Exhibit W (amended) shows that during the 8:00 P.M. to 11:00 P.M. time period prior to March 21, 1971, there were 55 deletions of network programming, 53 of which were not reported to the network and 41 involved the use of the "CBS ID Slide" entry on the WJIM–TV log. The CBS slide notation on the station log was the preplanned signal for the WJIM–TV operator to leave the network early

(ACLU Exhibit W (amended), pp. 1–15). ACLU Exhibit W (amended), p. 2, lines 1, 11; p. 3, lines 5, 12; p. 5, line 14; p. 15, line 2) shows six clips by GTI of network feed caused by the GTI policy of news headline promos. All six involved the "CBS ID Slide" notation on the WJIM–TV log and five of the six were not reported to CBS. Between September 15, 1970 and March 21, 1971, there are shown on ACLU Exhibit W (amended) 59 deletions of network daytime programming such as *Love of Life* and *Search for Tomorrow* (ACLU Exhibit W (amended, pp. 1–15). None of those deletions were reported to CBS and 29 involved the WJIM–TV use of the "CBS ID Slide" notation on its log, which as previously noted was the signal for the operator on duty to leave the network early. Prior to September, 1972, GTI submitted its comp reports to CBS with just a checkmark after the programs it carried. Other than the checkmark, no effort was made on the comp reports to specify the length of any program deletions or the reasons therefore. (Tr. 20378–80).

191. The March 1971 date assumes importance in this proceeding because on March 17, 1971, William B. Ray, then Chief of the Complaints and Compliance Division of the Broadcast Bureau, sent the following letter to GTI:

> Gentlemen:
>
> The Commission has recently received the enclosed complaint concerning the operation of Station WJIM–TV.
>
> The Commission has no independent information regarding the subject of this complaint and has made no determination in the matter. In order that we may be fully advised as to all of the circumstances surrounding the allegations made, you are requested to submit comments within twenty days of the date of this letter. Your comments should include, but need not be limited to, response to the following:
>
> 1. Did or does Station WJIM–TV insert advertising in network programs at other than the scheduled times in such a manner as to affect the program contend of such broadcasts? If so, state when and under what circumstances, and whether it is the policy of the licensee to insert commercial or other material in programs, join them late or leave them early with such effect. (Bureau Exhibit A, p. 1.)

The enclosure mentioned in Mr. Ray's letter was attached, which was a letter dated March 2, 1971 from Mrs. R. Cunningham as follows:

> On Monday, March 1, 1971, I was viewing Rowan & Martin's Laugh-In over WILX TV Channel 10 for Lansing, Flint & Jackson. At approximately 8:15 the stations broke for a commercial. When the show resumed the Negro comedian told a joke about the clergy and the camera zoomed away to a skit. We never saw anything after that until another member of the cast, dressed as a minister was doused with water. WILX used the time *from the program* for local commercials! I personally am fed-up with these tactics and wish to see this stopped as this is *not* the first time this has happened.
>
> WJIM & WILX stations both use this practice to jam the programs for their own profit. I was under the impression that if this practice were not unlawful, it was at the very least, extremely unethical.

> Other times of abuse include:
>
> The Mike Douglas Show (WILX)
> The Johnny Carson Show (WILX) chronic
> The Merv Griffin Show (WJIM) chronic
> *The CBS Evening News* (WJIM)
>
> This is appalling. It's bad enough that the public is at the mercy of the stations in what they view, but this out & out profiteering is ridiculous!
>
> I would like an explanation for this and measures taken to prevent a reoccurrence. (Bureau Exhibit A, pp. 2–3.)[47]

A copy of Ray's letter and enclosure was sent to the GTI communications counsel.

192. Upon GTI's receipt of the Ray letter, H.F. Gross and Sherck discussed the matter and Sherck drafted a reply within 24 hours and the draft became the final version as signed by H.F. Gross. Mr. Gross signed the Sherck draft letter on the same day he received it from Sherck. The GTI reply was prepared without reference to logs or other documents. Sherck did not consult anyone prior to preparation of the draft and Harold Gross and Sherck did not discuss the Sherck draft as submitted to Gross (Tr. 20332, 20340–42, 20580–89, 21094–97 and 21171). The GTI March 25, 1971 response to the Ray March 17, 1971 letter reads in part as follows:

> It is not now, nor has it been in the past, our policy or practice to insert locally originated commercial material within the body of a network telecast. From time to time, and on limited occasions, the network advises us of unsold commercial positions within a network program and authorizes our use of these positions for the insertion of locally originated advertising. In these instances, we have made use of these authorized availabilities for the insertion of local advertising, but limited to the designated time and specific position(s).
>
> Since the format of the program ["Merv Griffin Show"] is loosely designed and flows without specific timings, it is understandable that a viewer could erroneously develop the impression that a local station was covering network program material.

The Harold Gross letter to the Commission also dealt with late joins of the Merv Griffin Show; and the viewer complaint that WJIM–TV had inserted local commercials in the "CBS Evening News" which comes over the network feed at 6:30 P.M. (The entire Gross March 25, 1971 letter is Bureau Exhibit B.) Harold Gross in his March 25, 1971 letter stated that late joins, or apparent late joins, of the "Merv Griffin Show" were caused by the network. For example, the network had a special public service show on March 23rd ("Selling of the Pentagon") which ran until 11:18 P.M. and the network did not start the Merv Griffin Show until 11:48 P.M., thus allowing WJIM–TV to program a full half-hour of its news, weather and sports before joining the Merv Griffin Show. On other occasions, the CBS Thursday and Friday night move would run beyond 11:00 P.M. and in these instances, WJIM–TV would carry a full 30 minutes of local news, weather and sports before joining the Merv Griffin Show. As for the CBS 6:30 P.M. news, Mr. Gross said this network program was carried "without local interruption." The ultimate conclusion as stated in the Gross March 25, 1971 letter is "[i]n summary, WJIM–TV does not insert local material or advertising in network programs except when authorized." Both Sherck and H.F. Gross believed that the March 25, 1971 response to the Ray letter concerned only a type of clipping which would interrupt the actual program content, that is to say, the actual athletic event, or program content involving the play or event covered in the broadcast. Gross and Sherck believed the only form of clipping at WJIM–TV was the early disengagement of the network just prior to the station break in such a way as to protect program content (Tr. 21319–20).[48] It was the view of both Sherck and Harold Gross that in responding to the Ray letter that the focus was to be on the specific allegations in Mrs. Cunningham's letter (Tr. 20340 and 21311).[49]

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[47] Station WILX is not involved in this proceeding.

193. On March 6, 1970, Harold Gross sent a memo to "All Directors" which established a policy of joining the Griffin show late if the network programming went past 11:00 P.M. In this event the memo explained that GTI should use a full 30 minutes for its news program and join Griffin late (Bureau Ex. I). On May 13, 1970, Mr. Harold Gross wrote a follow-up to his March 6th memo to "All Directors." He had observed that the previous night GTI had cut its 11:00 P.M. news short because of an extra long editorial and Gross' established policy that the news portion of the 11:00 P.M. Six Star Edition should run the full 10 minutes.[50] If any problems developed such as movie run overs or long editorials, the 10 minutes of news should not be cut. Rather, the sports or weather parts of the total news show should be cut or the Griffin show can be joined late. He emphasized that if the Griffin show is joined late, the join should be clean and Griffin's show opening gives several good opportunities for a clean entry. (Bureau Exhibit K, p. 2.) In keeping with the Harold Gross policy of running the 11:00 P.M. local news program for a full 30 minutes and

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[48] This belief, of course, varies from the definiton of an entire program as contained in the CBS affiliation contract.

[49] There was testimony by Ralph Allen which attempted to tie-in a conference Allen had with Harold and James Gross concerning a listener complaint that GTI had late joins of network programs. Whether the Cunningham letter was the subject of the conference is not clear as Allen did not read the complaint letter and it is only possible for him to pinpoint the time of the conference to sometime between March 1970 to August 1971 (Tr. 19508, 19949–50 and 19954–58).

[50] GTI subdivided its 11:00 P.M. news program into news, sports and weather segments. Here, Gross is directing that the news portion of the 30-minute program take the full allotted 10 minutes. When reference is made to taking a full 30 minutes for a news program, it should be understood that the reference is to a combination of news, weather and sports.

joining Griffin late if required, both Colegrove and Sherck sent memos of May 28, 1970 and September 4, 1970 (Bureau Exhibits N and R) pointing out special network programming that could cut into the time for the full 11:00 P.M. 30-minute news program, and, in keeping with the Harold Gross policy, the Griffin show was to be joined late. Harold Gross appeared to be a consistent viewer of the GTI 11:00 P.M. TV news program when he was in town. In a series of memos dated June 9 and 16 and August 12, 1970 (Bureau Exhibits O, P and Q), he was critical of the 11:00 P.M. news program. It appeared to him that there were too many ad-libs, technical problems and a general failure to rehearse the program. The result was, in Gross' opinion, a bad news show and a late join of the Griffin show while in progress. Gross wanted the news show improved and the Griffin show joined on time except when the network late movie runs over or the network has a special program.

194. On November 12, 1969, Tom Jones wrote a confidential memo to Harold Gross which among other matters advised that the GTI practice of extending breaks in the Griffin show makes for a choppy and confusing program, as often the program is rejoined after the guests are introduced (Bureau Exhibit F).

195. On July 30, 1971, GTI received an all clients memo from its Washington communications law firm. The memo described a recent case where the Commission had fined a Louisiana station $7,500 for submitting false certificates of performance to the Mutual Broadcasting System. The memo noted that the Commission required the submission of accurate certificates of performance to the network, and, that GTI should review its procedures on the filing of such reports. When the memo arrived from the Washington law firm, Harold Gross was not at the station and he was not available on a day-to-day business basis for several months thereafter.[51] During Harold Gross' absence, the law firm memo would have gone to either James Gross or the GTI accounting department (Tr. 21074, 21353 and 21468). While Mr. James Gross and Mr. Lloyd Tremper (GTI Accounting Department) did not recall seeing the memo, Mr. Tremper recognized the memo as pertinent to fraudulent billing practices. Tremper said such memos were routinely forwarded to him and he had undoubtedly "seen this particular one" (Tr. 21047).

196. On February 17, 1972, the GTI's Washington communications law firm sent a letter to Harold Gross with copies to James Gross and Tom Jones concerning a recent Commission decision which fined a Las Vegas station $10,000 for clipping. The letter stated in part that:

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[51] In August 1971, Harold Gross suffered a stroke. He had surgery at the Mayo Clinic at Rochester, Minnesota. This was followed by several months convalenscence at locations away from Lansing, Michigan. He did during this period go to New York City and Puerto Rico for meetings of the CBS Affiliates Board and he spent the Christmas holidays in Lansing (GTI Exhibit III, p. 1; Tr. 21104–05, 21273; Bureau Exhibits GG and HH).

> The station made a practice both of joining network entertainment programs late (up to 30 or 40 seconds) and of discontinuing broadcast of such programs before their conclusion by substituting local commercials for program credits, network promos, and even network sponsor identification announcements. And the station regularly reported to the network (ABC) that the programs were carried in their entirety. (Bureau Exhibit NNN, p. 1.)

The law firm letter advised that the activity described was found by the Commission to violate Section 317 of the Communications Act and Sections 73.654 and 73.1205 of the Rules.[52] Mr. Tom Jones brought his copy of the February 17, 1972 law firm letter (Bureau Exhibit NNN) to the next Monday morning GTI department head meeting because he believed the station had a problem in this area which should be resolved, and so advised those attending the meeting. This Monday morning meeting was attended by James Gross, Phil Sherck, John Cundiff, Lloyd Tremper, Carol Onken and others. Jones was aware of the clipping on WJIM–TV but this was the first time Jones had seen any FCC action on the matter. Jones felt that this was a problem that they should resolve "within their own shop" (Tr. 19332). Jones recalled that James Gross[53] stated the matter could wait until his father (Harold Gross) returned to Lansing in the near future. Mr. James Gross recalls this event as occurring near the tail end of the Monday staff meeting (Tr. 21369). James Gross states he told Jones that the clipping information from their counsel looked like a scheduling problem and Jones ought to take the matter up with Sherck (Tr. 21371). Sherck recalls that the memo was a subject of some conversation with James Gross in the hallway, after the meeting (Tr. 20698). Sherck recalls that while he and James Gross were walking in the hall towards their offices, the letter from the station attorney was mentioned in that an initial decision has been issued at the Commission which recommended that a station license not be renewed for some clipping violations and James Gross thought the matter should be discussed with Harold Gross (Tr. 20857 and 20860). Sherck could not recall if he had received a copy of the attorney's letter (Bureau Exhibit NNN). He recalled that he had been "carboned" on a letter from the attorney. However, when he was shown Bureau Exhibit NNN, he was not sure he had received this particular letter, since he was not shown as receiving a copy (Tr. 20698).

197. Mr. Harold Gross returned to the station on March 22, 1972 (Tr. 19337). Sherck briefly discussed the attorney's letter on network clipping and Harold Gross noted that this was the first time in his memory that the FCC had taken any action in this situation (Tr. 21180). The conversation

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[52] Section 317 of the Act concerns announcements with respect to certain matter broadcast; Section 73.654 (now 73.1212) deals with sponsorship identification; and Section 73.1205 concerns fraudulent billing practices.

[53] James Gross became president of GTI in March 1971 (Tr. 5398).

ended with Harold Gross stating the matter would have to be looked into and Sherck agreed (Tr. 20358–59).

198. That same day (March 22, 1972) Jones discussed the attorney's clipping letter (Bureau Exhibit MMM)[54] with Harold Gross (Tr. 19337). Harold Gross either told or gave Jones the impression that he (Gross) and Sherck would handle the matter, but, believed GTI was not involved in any clipping of the network (Tr. 19338). Jones told Harold Gross that the station (WJIM–TV) did have a network clipping problem. The meeting lasted 10 or 15 minutes and went back and forth with the views of Harold Gross and Jones. The meeting ended with Harold Gross stating that Jones was not to get involved in any station review of network clipping practice, Jones should turn over the attorney's letter (Bureau Exhibit MMM) to Sherck, and that their attorney's instructions were to be followed to the letter (Tr. 19339). Jones then suggested that Harold Gross dictate a memo to Sherck about the station's anti-clipping policy as just related to Jones. Harold Gross replied that Jones should dictate the memo at which point a secretary was called in and Jones dictated the memo which became Bureau Exhibit PPP. The memo from Harold Gross to Sherck stated: "Per our discussion, please see that we are in compliance with the FCC 'clipping' ruling. I understand we are currently conforming with the prescribed standards in this area." (Tr. 19339 and 19340.) According to Harold Gross, Jones told him "that he thought something should be done to see we are in compliance." Thus, Harold Gross and Jones wrote a memo (Bureau Exhibit PPP) to Sherck (Tr. 21180). Harold Gross' recall of the meeting with Jones is that they agreed clipping was a violation of the Commission's Rules, but neither Jones nor Gross had made any check to see if on this date, GTI was engaging in the practice (Tr. 21272). Mr. James Gross testified that he walked into the meeting between Harold Gross and Jones. While his recall of events was hazy, he believes Harold Gross and Jones were discussing either Bureau Exhibit MMM or NNN and Jones suggested a memo be sent to the traffic department. James Gross believes all three (Harold and James Gross and Jones) discussed the memo. Harold Gross then asked for his secretary and Harold Gross then dictated the memo (Bureau Exhibit PPP) (Tr. 21376–78). Mr. Jones was asked why, if he dictated the Harold Gross to Phil Sherck memo (Bureau Exhibit PPP), was the second sentence included, *i.e.*, GTI was currently conforming with prescribed standards on clipping. Jones in fact did not believe the station was conforming to prescribed standards. Jones stated that Harold Gross knew of Jones' belief that GTI was clipping but Harold Gross disagreed with Jones on his conclusion. Thus, the memo was in terms of the belief of Harold Gross (Tr. 19340).

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[54] Bureau Exhibit MMM is Mr. Jones' copy of Bureau Exhibit NNN. The exhibits are identical except for handwritten notations and some underlining Jones has added to his copy.

199. Mr. Sherck received the memo dictated by either Harold Gross or Jones (Bureau Exhibit PPP) and he met with Harold Gross about the memo although there is some difference in the testimony as to what exactly took place. Initially, there is a difference whether the meeting took place in Sherck's or Harold Gross' office (Tr. 21107 and 20360). At the time of the memo from Harold Gross to Sherck (March 22, 1972, Bureau Exhibit PPP), Sherck shared an office with Jack Colegrove and Harold Gross came to Sherck's office while Colegrove was present. Prior to Harold Gross' appearance, Sherck had reviewed the matter with Colegrove and Sherck offered the opinion that the Grove memo was a "pretty serious edict and we had better take note of it." At the meeting between Gross and Sherck with Colegrove present (Sherck version) Sherck told Gross that "We have some problems with this." The extent of the problems were not related to Harold Gross. Gross advised Sherck that if he had problems, he should "get them cleaned up" and Sherck said he would. It was Sherck's opinion that Colegrove being in the room which was about 18′ × 14′ could have heard the entire conversation. In fact, Sherck believes that he turned to Colegrove after Harold Gross' departure and said to Colegrove something like "This looks like it means business" (Tr. 20359–62).

200. Mr. Colegrove was a witness and had been in the GTI TV traffic department since late 1963 and held this position until March or April 1977. His supervisor was Mr. Sherck. Thus, Colegrove processed all confirmed sales orders from national and local sales reps, handled TWX correspondence with sales reps and prepared the logs (Tr. 19625). It is Mr. Colegrove's testimony that he never saw Bureau Exhibit MMM or NNN, *i.e.*, the attorney's letter about the station being fined for network clipping, until about five weeks before he testified on May 19, 1977 (Tr. 19684). Also Colegrove does not recall ever seeing the Harold Gross to Sherck memo of March 22, 1972 relative to compliance with the FCC clipping ruling until several weeks before he testified (Tr. 19686).

201. During this same period when GTI received the letter from its counsel about network clipping, February 17, 1972, (Bureau Exhibits MMM and NNN), Mr. James Gross received a letter on this same subject on March 13, 1972 from Bruce R. Bryant, Vice President, Director, Affiliate Relations (CBS) (ACLU Exhibit D). The Bryant letter, which was sent to all CBS affiliates, points out that if an affiliate clips network programs and reports such programs as being carried in their entirety to the network, this constitutes fraud under most state laws, violates Section 73.1205 of the Commission's Rules and is a serious matter to the network. The letter points out that it recently withheld compensation payments for several months due to clipping and sent a notice of termination to one of its long-time affiliates. The Bryant letter went on to quote the pertinent provisions of the CBS affiliation contract which requires

network programs to be carried in their entirety including, but not limited to, billboards, credits, public service announcements, promotional announcements and network identification. The letter also made clear that any deletion of any part of a network program should be reported under the "Remarks" column in its weekly comp report (ACLU Exhibit D). James Gross, himself, regarded the Bryant letter as a follow-up to the one received from GTI's counsel several weeks earlier (Bureau Exhibit MMM) and he treated it the same way. He did not focus on any specifics of the letter other than to ascertain it should go to Sherck which is where he routed it (Tr. 21490). James Gross does not recall if he ever mentioned this letter to his father (Harold Gross) and he does not know if he sent him a copy (Tr. 21491). Harold Gross is not sure when he first saw the Bryant letter, but assumed that James Gross had done whatever was necessary (Tr. 21277 and 21262). Sherck could not recall seeing the Bryant letter in March 1972, but the letter in evidence (ACLU Exhibit D) does contain the handwritten notation by James Gross, "File, CC: Sherck" (Tr. 21262).

202. Returning now to Mr. Sherck and the memo from Harold Gross to see that GTI is in compliance with the FCC clipping ruling (Bureau Exhibit PPP). Sherck knew in March 1972 that he had problems in attempting to comply with the memo since there were then more confirmed orders for non-network commercials than GTI could accommodate. Sherck recalls that GTI let the existing contracts "play out" and by the summer of 1972 clipping had been reduced to about zero (Tr. 20362). This process was aided by a seasonal summer reduction in demand for commercial time (Tr. 20362). However, by August 1972 the fall commercial orders began to escalate and GTI was back to its pre-March 1972 problem with oversold commercial time (Tr. 20363). Because of the seasonal nature of the sale of commercial time, it was Sherck's view that clipping continued at GTI through October–November 1972. There was a reduction of clips in January 1973 and there were occasional clips in February, March and April 1973 (Tr. 20363).

203. Mr. Jones also continued to check GTI for possible clipping subsequent to the March 22 memorandum (Bureau Exhibit PPP). Like Sherck, Jones was aware commercial sales dropped off during the summer and Jones saw only scattered instances of clipping during the summer. Jones said he could observe clipping by viewing the station. He also could look at the station logs and he found explicit instructions about leaving the network early noted on the logs. On occasion, Jones would compare the time for a GTI commercial break with what he knew to be the network authorized time for the break and found GTI was using more time than allowed. Jones discussed this with Sherck and took logs to department head meetings on several occasions (Tr. 19341–42 and 19474–76). It was Jones' observation that Sherck was well aware of the March 22nd memo

from Harold Gross ordering clipping to stop. When Jones told Sherck that he (Jones) was still observing clipping, Sherck replied that he was under pressure to increase sales figures (Tr. 19345–47).

204. At this point, Jones again reviewed the attorney's letter of February 17, 1972 (Bureau Exhibit MMM), underlined certain parts of it and zeroed in on the way a network affiliate like WJIM–TV filed comp reports. Jones learned from Lloyd Tremper that GTI did submit comp reports to CBS, that the reports filed by GTI simply checked off if a particular program was carried. However, Jones noted the affidavit part of the comp report indicated that if an entire program was not carried, it should be noted on the report. Except for a few notations that some network programs were deleted due to carriage of Detroit Tiger baseball games, there was no other notation concerning programs not carried in full. Jones also learned that Sherck signed the comp reports (Tr. 19342–54). With this information Jones decided to see Harold Gross again, and he did. The conference began with Gross restating his position that Jones should stay out of this area, but, Jones told Gross he believed clipping involved another problem in that GTI was submitting false information to CBS. Gross replied that GTI would never be involved in this and said that Jones was wrong in his belief. Jones then explained that the GTI comp reports did not indicate the exact time a program was carried, but simply checked the program as carried. Gross then called Tremper and Sherck and Tremper confirmed Jones' findings and Sherck said GTI had used the checkoff system for comp reports for 15 years. Gross then directed that future comp reports should indicate the exact on and off times for each CBS program carried and to use the master control operator log for this purpose. During the meeting, there was no discussion about use of the "Remarks" column on the comp report and nothing was said about expansion of mid-breaks (Tr. 19354–56).

205. Sherck saw to it that the new Gross policy, *i.e.*, listing of each on-off times on comp reports, was implemented. Sherck continued to sign the comp reports, but, after the new procedures were established, he made no checks to see the instructions were followed, nor did Harold Gross make any follow-up on his new direction for filing of comp reports. The "Remarks" column of the comp report and its possible use was still not part of any instruction from Sherck or Harold Gross to those GTI employees actually engaged in the preparation of GTI comp reports (Tr. 20719–23 and 21183–84).

206. The record contains an example of a comp report issued after Harold Gross's instructions in September 1972, *i.e.*, the exact on and off times of each program are entered. The comp reports as received by GTI had preprinted program times which were rounded off to the closest hour

or half-hour.[55] Normally network programs do start on the hour or half-hour. However, with station breaks coming at the end of the program, the actual off time would be different from the preprinted rounded off time, or, so-called straight up or straight down time. The GTI Accounting Department would cross out the network preprinted off time and write in its actual off time. For example, on April 9, 1973, a program shown by the network as running between 10:00 to 10:30 P.M. is corrected by GTI to show 10:00 to 10:28–45 P.M. (Bureau Exhibit LLL, p. 4, Tr. 19365). No entries were made by GTI under the "Remarks" column. Because of the CBS practice of rounding off the program times, CBS would have to check each program listed by it on the comp report and compare it with its record of the actual off to determine whether or not GTI carried the entire network program. Sherck recognized that the GTI exact time corrections on the comp reports would reflect late joins or early departures, but, would not reflect the expansion of mid-breaks in a network program (Tr. 20728).

207. Following the September 1972 meeting between H. Gross and Jones and on December 28, 1972, Harold Gross by memo (Bureau Exhibit KK) directed the use of short approximately 20-second promos for the GTI news at 11:00 P.M. Such promos were to be accomplished by cutting "away from network music and over the video credits—with the promos logged as they occur." After the promo "at 10:59 P.M.[56] we can rejoin the network and take the break as usual." This was followed by a Harold Gross memo of February 23, 1973 directing that the 10:59 P.M. news promo should concentrate on means to hold the viewers for the news to follow at 11:00 P.M. and for the movie following the news. Harold Gross wanted the promo at the "closing" of the CBS show "even if it means eliminating the credits." This was essential, in Harold Gross' view, as an ARB survey was then in progress and GTI then had a newspaper campaign featuring the 11:00 P.M. news and the 11:30 P.M. movie. It should here be noted that the news promos Harold Gross directed to be carried over WJIM–TV were first indicated to be contrary to CBS policy about two years later in August 1975 (GTI Exhibit AAA). Mr. Donald Clancy of CBS testified that the practice of promoting a station's local news was widespread and "everyone seemed to be doing it" (Tr. 19832). Mr. Allen carried out the directions in Harold Gross' memo (Bureau Exhibit MM) and he said the only way he could carry out this directive was to "get out of the CBS network programming before the system cue. There is no other way I know of to do it" (Tr. 19967).

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[55] There are some exceptions. Periodically during the broadcast day the network would terminate for example a 9:00 A.M. program at 9:26 in order to insert a 4-minute news program ending at 9:30.

[56] The memo dealt with additional promos at 7:00 P.M., 8:59 P.M. and 9:59 P.M. on different days of the week.

208. Next, on March 14, 1973, Tom Jones issued a memo that the 11:00 P.M. news[57] promo not involve cutting away from the network and the promo must be after the network system cue (Bureau Exhibit 00). Mr. Allen was the actual GTI employee responsible for the news promos during this period of time. He stated that the Jones March 14, 1973 memo did reflect a change in policy in that no network programming was to be deleted and GTI "will wait for the system cue," *i.e.*, in the case of the 11:00 P.M. GTI local news, the network feed would terminate with the display of the system cue (the CBS eye logo). Mr. Allen did not recall any sharp dividing line in GTI policy as a result of the Jones memo, but, the Jones memo would have been followed by Allen as he considered Jones as speaking for Harold Gross (Tr. 1970–71).

209. Other than the GTI policy on news promos, other events took place in the spring of 1973 which bear on the clipping issue. On May 4, 1973 Jones noticed that one local spot which was over the time limit allowed by the network had been placed on the log. Jones complained to Sherck about this situation, which, of necessity, would result in a clip of some part of the network program. Jones was told that the local commercial had been sold by Harold Gross himself and nothing could be done about deleting it. Sometime during the Jones-Sherck meeting, James Gross became involved and Jones was told that because Harold Gross was out of town, nothing could be done to delete the spot. Jones then told Sherck and possibly James Gross that unless something was done about it, *i.e.*, selling more spots than available time, he (Jones) would take some steps to get the matter resolved (Tr. 19371–74 and 19493–95). ACLU Exhibit W (amended), p. 54, lines 7 and 8, shows the extra spot was carried by GTI.

210. Harold Gross, while not at all clear as to the date, did recall a Kentucky Derby which was oversold of one spot. "They" brought it to his attention on Thursday (May 3rd) and Gross' comment was "We will get it in someplace" (Tr. 21107). Sherck remembered talking to Harold Gross about the oversold spot. Sherck recalls he told Gross that GTI had obligations to clients with confirmed spots and sports package clients. Sherck recalls that Harold Gross then told him to get the commercials in (Tr. 20732).

211. On Monday after the Derby, Jones called the then-GTI counsel, Peter Shuebruk, about clipping on WJIM–TV and told him about the Derby clip the previous Saturday caused by the sale of the extra local commercial spot. Mr. Shuebruk informed Jones that he would take some steps to get the matter resolved (Tr. 19371). Sherck had, without checking, signed a CBS comp report, including the Derby, which showed no clip of the network (Tr. 20734–35). GTI did report the Derby clip to CBS in a

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[57] While Mr. Jones speaks of the 11:00 P.M. news promo, it is clear from the text of this memo that he is concerned with the news promo before the end of the network program.

letter to CBS dated June 15, 1973, which was after the filing of the comp report (ACLU Exhibit R).

212. The record also shows that during the spring of 1973, James Gross took action on station clipping. On March 12, 1973, James Gross by memo (Bureau Exhibit NN) stated that he had observed instances over the past several weeks where the Martha Dixon Show, a local time show, was running over its allotted time, with the resultant late join of the following network show. Gross ordered these overruns to stop.

213. In mid-May, 1973, Harold and James Gross with Sherck attended the CBS affiliates meeting at Los Angeles. While there, Mr. Shuebruk, GTI counsel, called either Harold or James Gross or both and told them that Leo Resnick, counsel for WILX, a GTI competitor, had complained about clipping on WJIM–TV. It appeared that WILX had been monitoring the "Sonny and Cher Show" carried over GTI on Wednesday nights and this was the basis for its claim of clipping. Harold and James Gross with Sherck discussed the Shuebruk call and directed Sherck to call Colegrove, traffic director, at GTI, and order him to delete any scheduled deletions, i.e., extended local station breaks during network programming. Colegrove confirmed that GTI had scheduled an extended break in the "Sonny and Cher Show" that very evening. Sherck told him to immediately terminate any clips of the network during this show together with any clips at any other time and to "cease clipping period" (Tr. 20364 and 20745–47). James Gross and Sherck on the return trip to Lansing, Michigan after the Los Angeles meeting discussed the Shuebruk call and decided that WJIM–TV had to stop clipping[58] (Tr. 21382–83). Upon arrival back at the station, James Gross and Sherck found a letter from Shuebruk advising that clipping has got to stop; WILX is monitoring WJIM–TV; the FCC has found clipping to be a deceptive practice and is prepared to read the riot act; and suggesting that GTI catch WILX in clipping (Bureau Exhibit 000). A copy of the Shuebruk letter was sent to Harold Gross in Arizona (Tr. 21109).

214. James Gross and Sherck then reviewed a number of WJIM–TV station logs and confirmed that the station was clipping the network (Tr. 20743 and 21410–14). Next, James Gross wrote a memo to Sherck on May 23, 1973 that both the FCC and station policy prohibited clips of the network to accommodate a local commercial and that special care should be taken to see that GTI does not clip either the beginning or end of any network program (GTI Exhibit E). James Gross' purpose in sending this memo was to confirm what Sherck and he had discussed on return trip from Los Angeles (Tr. 21385). Colegrove did not see this memo at the time it was issued (Tr. 19692).

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[58] Harold Gross was not part of this conversation as he went from Los Angeles to Arizona (Tr. 21383).

215. Harold Gross returned to Lansing on May 24, 1973 and he reviewed Shuebruk's May 15 letter and underlined parts of it and sent copies to Sherck and Colegrove with a marginal note to "comply without exception" (Tr. 20371–72 and 21111–12; Bureau Exhibit 000). It was the view of Harold Gross that after his memo (Bureau Exhibit 000), his instructions on clipping were carried out and the station was very clean except for some announcements scheduled by Colegrove which were unknown to Gross (Tr. 21113 and GTI Exhibit Y).

216. A short time after James Gross and Sherck had returned from Los Angeles, Colegrove passed James Gross in the hall of the GTI offices and Colegrove asked James Gross if the policy of not clipping network programs pertained to other than prime time announcements. Colegrove cannot recall the actual reply of James Gross but he said the impression given him was that "we are in a holding pattern—I can't answer that at this time" (Tr. 19691). Colegrove, in preparing his logs, did not chart time for daytime programs or the Merv Griffin program because time was always available (Tr. 19729–30). However, Colegrove testified that within six months,[59] he did receive the final word on clipping, i.e., there would be no elimination of network programming (Tr. 19731). Colegrove believes that any clips of network programs after this would have been done on his own (Tr. 19732–33).

217. During the spring of 1973, late joins of the CBS network after the conclusion of the 11:00 P.M. local news program continued to present problems. On April 27, 1973, Harold Gross wrote a memo to John Bjoin stating that if there were important stories and a tight news show, he (Gross) would rather "get out late and make a good showing" than end the news program early (Bureau Exhibit PP). On May 17, Jones wrote a memo to Ralph Allen directing that the CBS late movie commencing at 11:30 P.M. be joined on schedule except when there is a genuine press of breaking news. When this one exception occurred, Allen was to contact Jones to secure an authorization to extend the news program (Bureau Exhibit RR). On May 18, Jones sent a memo to Tim Staudt, who was responsible for the sports segment of the 11:00 P.M. news show, stating the importance of joining the CBS movie on time. On May 29, 1973, Harold Gross called a meeting with the news department staff and others to discuss concerns with the GTI 11:00 P.M. news program. James Gross, Ralph Allen, Tim Staudt and John Bjoin were present but Jones was not. Both Allen and Staudt expressed the view that there simply was not enough time to include both news and sports in the 11:00 P.M. newscast.

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[59] Colegrove could not be more specific as to time. It could have been two weeks or a month, but it would have been within six months after the telephone call from Sherck and the hall meeting with James Gross.

Allen indicated that the 11:00 P.M. time squeeze problem was created because this particular news program covered state, local and national news, whereas the 6:00 P.M. news covered only local and state. Harold Gross believed that the news program could run overtime if the overrun was caused by a good solid news story. The news department was to be the judge of what stories would qualify under this Harold Gross test for permissible overruns (Bureau Exhibit TT; Tr. 19847–50 and 19979).

218. At this same May 29 meeting, there was discussion of the method to achieve a clean join of the network after an extended 11:00 P.M. news program. Mr. Bjoin, the director of the 11:00 P.M. news program, suggested that he tape the actual opening of the CBS 11:30 P.M. movie and that such tape be used to provide a local opening to the movie. This tape was to be used in the same way as the taped opening to the prior Merv Griffin show, so as to permit a clean join of the network show in progress. Thus, the local tape would be broadcast while the network feed was monitored for an opportune time to join the network, i.e., not in the middle of some song, dialogue or laughter. Harold Gross accepted the Bjoin proposal for the late join[60] and directed Bjoin to make a local tape of the opening to the CBS movie and emphasized that the network join be clean so that the viewer would not realize that there was a late join of the movie. Harold Gross noted that GTI received no compensation for carrying network commercials after 11:30 P.M. (Tr. 19852–54, 20213–15, 19225 and 21523). Bjoin produced the tape for the introduction to the late movie by June 4, 1973, and one week to 10 days after the May 29 meeting, the local tape, i.e., the one produced by GTI for the movie opening, was aired. Jones was watching the news program that night and saw the end of the news and the movie open. Suddenly, according to Jones, the station was two or three minutes into the movie. Jones then telephoned Bjoin and was told the circumstances of the local movie introduction. Jones ordered the use of the local tape for the movie opening discontinued (Tr. 19433–34, 20215–16 and 19859–61). GTI did have a policy, as reflected in various memos from Harold and James Gross, Jones and Sherck, to make late joins of a network show in progress as clean as possible (Bureau Exhibits I, K, M, EE, FF, GG, HH, and Tr. 21323). There also were efforts to videotape prime time breaks during the afternoon hours so as to avoid human and technical errors (GTI Exhibits H, K; Tr. 21410–12). The Martha Dixon show was a local live program which had overrun problems and James Gross issued a memo in March, 1973 directing that the program be kept within its allotted time (Bureau Exhibit NN; Tr. 21414–16 and 21566).

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[60] There is some suggestion in the record that Harold Gross did not care how the late join was accomplished just so it was a clean join (Tr. 19852).

219. On June 11, 1973, Jones wrote a memo to Allen, Staudt, Wayne and Bjoin directing that the 11:30 P.M. network movie be joined on schedule except where a legitimate late breaking news development occurred. Where there is a news runover coming within the one exception, Jones directed that advance approval be obtained from either Harold or James Gross or Jones, and noting that the news show performers did not have authority to make a decision which would clip the network (Bureau Exhibit XX). The advance approval instruction was Jones' idea (Tr. 19431). On June 12, 1973, Bjoin sent a memo to Harold Gross about Jones' June 11 instructions. Bjoin also told Gross of Jones' belief that it was dangerous to try to fool the public with the duplicate movie opening and it should be eliminated (Bureau Exhibit Y). It will be recalled that the locally produced late movie introduction was discussed at a May 29, 1973 meeting, and by June 4, 1973, Bjoin had produced a tape for late join of the movie. By June 8, 1973, ACLU Exhibit W shows that the movie was joined 3 minutes, 15 seconds late. During this period of time, i.e., 3 minutes, 15 seconds, WJIM was airing the weather portion of its news program which included commercials for Story Olds, Jones Gifts and Montgomery Ward. During this same period of time, the CBS network was carrying the movie introduction which included the first break and contained commercials for Nestles, Luv Stick, Gibson Air Conditioners and Ultra Ban 5000 (ACLU Exhibit W, p. 56, line 15).

220. During this period of time, i.e., May and June, 1973, there was a considerable number of memos, letters and telephone calls about late joins of the network. On May 22, 1973, Carl Ward sent Harold Gross a letter from a WJIM-TV viewer, Doug Rook, who complained of WJIM-TV consistently joining the CBS 11:30 P.M. movie 5–7 minutes late. Mr. Rook stated the practice was distressing to anyone interested in the first part of the movie (ACLU Exhibit L and Tr. 19748). Jack Colegrove confirmed by a memo of May 25, 1973 to Harold Gross that WJIM-TV had joined the late movie late three times the previous week (ACLU Exhibit N). Harold Gross then wrote Ward on May 29, which was the same day as the news department meeting, and told Ward that WJIM-TV had confirmed three late joins of the network the previous week, namely, Wednesday—11:37 P.M.; Thursday—11:30:50 P.M.; and Friday—11:32:15 P.M. Gross stated that such overruns had been reported to CBS and that such overruns did not occur unless there was a late developing news story or an editorial. Gross denied the validity of the Rook complaint insofar as Rook claimed the late join was "consistent," and Gross stated the first part of the movie plot was not missed. Gross further asserted to Carl Ward that WJIM-TV did not introduce extra commercials into its programs but did carry regularly scheduled commercials which follow the news. Gross did not mention to Ward that WJIM-TV had prepared its

own taped introduction to the CBS Late Movie (ACLU Exhibit 0). During this period of time, another CBS executive, Len Morreale, telephoned Mr. Sherck on June 6, 1973, at WJIM-TV, and Morreale said he was upset about the pattern of late joins and hoped the station could immediately correct the problem (Bureau Exhibit W). Sherck wrote a memo to Harold Gross about the morreale telephone call and Harold Gross instructed Sherck to send Morreale a copy of the letter Gross had sent to Ward (Tr. 20756). On June 15, 1973, Harold Gross wrote Ward (CBS) again detailing some instances where WJIM-TV had cut away from CBS early during April and May, 1973. Gross also told Ward of a local WJIM-TV extension of a commercial break during the Kentucky Derby program. Harold Gross described these matters as "scheduling errors" and assured Ward that "the situation has been corrected and . . . will not occur again." Harold Gross did not mention his involvement in the prescheduling of the network Kentucky Derby deletion (ACLU Exhibit R).

221, On May 23, 1973, James Gross issued a memo to Sherck which cautioned that station policy prohibits clipping and Sherck should take special care to prevent clipping during end breaks (GTI Exhibit E). This May 23 memo resulted from a telephone call from GTI's legal counsel, Mr. Shuebruk, in which he advised that WJIM-TV was being monitored and WJIM-TV had inserted a 10-second local announcement in the Sonny and Cher Show (Tr. 21385 and 21373). Harold Gross was out of town at the time of the Jones-Gross May 23 memo. However, when Harold Gross did return, Sherck prepared a list, based on inspection of station logs, of 10-second clips of the network by WJIM-TV. On June 20, 1973, Harold Gross issued a memo to TV Traffic reprimanding that department for scheduling the extra 10-second spots during April and May, 1973 and recalled a previous instruction in his memo of March 22, 1972 (Bureau Exhibit PPP) that "it [clipping] was against our strongest policy" (GTI Exhibit Y; Tr. 21112–13). Also, during this period of time, Harold Gross heard about the WJIM-TV deletion of 20 minutes of a CBS news program. So on June 4, 1973, Harold Gross sent a memo to Sherck about this. It appears that WJIM had carried a Detroit Tigers baseball game which ran over 20 minutes, which game was to be followed by a barter taped program which would immediately follow the game. The WJIM-TV operator on duty ran the full taped barter program after the baseball game, resulting in the 20-minute late join of the CBS network news. Harold Gross gave Sherck his only reprimand in connection with his duties in this area and told Sherck that the log, in the future, should make provisions for these situations (GTI Exhibit F).

222. With the Harold Gross memos of June 4 and 20, 1973, it appears that Harold Gross terminated further consideration of this subject (Tr. 21185 and 21343).

223. Jones agreed that with the exchange of memos in June, 1973 between Gross, Bjoin and himself, the incidents of late network joins did decrease. However, he believed that the GTI policy on late joins of the 11:30 P.M. network movie was not clear. Thus, Jones requested Tim Staudt to submit in writing his understanding of the GTI policy, as developed at the May 29 meeting. Staudt responded that based on the May 29 meeting, if the 11:00 P.M. news ran over, the locally produced tape of the movie introduction was to be used and the network movie was to be joined at 11:34 P.M. by means of a clean join (Tr. 19428–29 and 19559–61; Bureau Exhibit TT).

224. Jones continued to find problems based on his understanding of the GTI permissible runover policy. On April 11, 1974, Jones viewed a runover of the GTI 11:00 P.M. news. The network was joined 1 minute, 50 seconds late in the middle of a network commercial cluster. Jones telephoned Will Murphy who was the TV news anchorman. Murphy stated the press of news required the overrun. Murphy told Jones that it was all right to have a news overrun if the following network program could be joined cleanly. Jones disagreed and said he wanted the Murphy version of this policy put in written form. This Murphy did, and had John Bjoin, the director of the 11:00 P.M. news program, also sign the memorandum. It was Murphy's position that he was following a policy as directed by Harold Gross. Jones then took the Murphy-Bjoin memo and sent it to Harold Gross with a cover memo indicating that he (Jones) believed that the Murphy-Bjoin memo misstated the GTI policy about late joins of the network. Harold Gross later told Jones that he agreed with Jones and he (Gross) would speak to Murphy about the situation (Tr. 19441–43, 19538–42, 21134 and GTI Exhibit G).

225. The GTI Exhibits BBB and GGG confirm the news runover observed by Jones, as well as runovers in other GTI programs. However, GTI has offered explanations for some of the runovers. The GTI logs show a 30-second late join of the program "Maude" on February 19, 1974. This was not reported to the network, but GTI states there was a 30-second overrun error in a previous local taped program which, but for the error, was logged to provide a proper and timely join of the network (GTI Exhibit BBB). On this same date, February 19, GTI deleted a CBS promotional announcement and substituted a local news promo and a local cluster of announcements. GTI states that the network promo was deleted because it carried the program on a delayed basis and it reported this early disengagement to the network (GTI Exhibit BBB, p. 7). There were other overruns of local programming during this period which GTI explains, in effect, that while GTI scheduled a clear on-time join of the network, errors did occur in not properly timing local taped programs and local commercials (GTI Exhibit BBB, pp. 4–5). This particular period of

time is critical to the consideration of this issue, as on May 14, 1974, ACLU filed a petition to enlarge issues against GTI with respect to possible clipping.[61]

226. On May 18, 1974, Jack Colegrove scheduled the expansion of several station breaks in children's programs on Saturday. The 30-second expansion was done to accommodate station advertisers. Jones discovered the overruns and told Colegrove that this should not be done and also advised James Gross of the overscheduling. Jones and James Gross then decided to review the logs from the Saturday Jones had observed the overrun and several previous Saturdays. Program clipping was discovered, and by memo of May 20, 1974, James Gross requested Colegrove to explain the clips. Colegrove responded that one GTI advertising client had changed from a Schedule II to Schedule I time buyer.[62] The timing was such that the required two weeks notice could not be given to the pre-empted Schedule II buyer so Colegrove viewed the matter as GTI having confirmed orders for time from clients purchasing both Schedule I and II time. It appears Colegrove had mislaid the pre-emption order on his desk until it was too late to give the required notice to the holders of the Schedule II time that their time was pre-empted. It also appears Colegrove prepared the TV logs on a day-to-day basis which did not lend itself to changes in the commercial time available to advertisers caused by pre-emption. James Gross decided the matter was serious enough to place Colegrove on probation for three months. James Gross did not believe Colegrove had adequately explained how the extra commercials had been sold because the pre-emption available to a Schedule I buyer had been overlooked. It also appeared to James Gross that Colegrove had scheduled extra commercials on at least one other Saturday (GTI Exhibit Q; GTI Exhibit EEE; Tr. 21390, 21392, 21527–28). When Colegrove was placed on probation for three months by memo of May 30, Sherck advised Colegrove that it was necessary for the station to make a record of this offense but that Colegrove need not be too concerned about it (Tr. 19697; GTI Exhibit FFF). The actual three-month probation period for Colegrove passed and the only time the probation was again mentioned was in December, 1974 when Colegrove was told he would receive a raise based upon some extra duties he was performing. He did receive the raise (Tr. 19698, 21394–95).

227. On June 4, 1974, James Gross wrote to Carl Ward, Vice President, Affiliate Relations (CBS), to inform him about the careless handling of spot announcements by WJIM-TV personnel. Ward referred the letter to

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[61] Official notice taken of the date the ACLU petition was filed as requested by the Bureau.

[62] A Schedule I buyer could pre-empt time under contract to a Schedule II buyer. When a Schedule I time buyer exercised this right, the Schedule II buyer was entitled to two weeks notice that his time was being pre-empted.

Donald Clancy, Director of Administration, Affiliate Relations (CBS), who met with James Gross at the CBS affiliate mini-conference at Oak Brook, Illinois on June 14, 1974. James Gross told Clancy that he was upset about the handling of spot announcements which resulted in a failure to carry complete CBS programming. He assured Clancy that this was against the station's stringent policy and the employee in question had been placed on probation. Gross and Clancy then discussed the gravity of clipping and Gross assured Clancy that safeguards had been implemented at the station to prevent any recurrence (Tr. 19740, 19748, 19751, 19764–66).

228. Next, Clancy telephoned Harold Gross on August 26, 1974 at his vacation home at Northport, Michigan to discuss clipping. This call was based upon a letter to CBS alleging that WJIM-TV had clipped the network programming on specific dates. It was Clancy's view, based on a CBS investigation, that WJIM-TV had cut away from network programs at the end of a program more than one-third of the time during April, 1973. It appeared to Clancy that the clipping involved network promotional announcements which were replaced by promotional announcements for non-network programs planned by WJIM-TV on a live basis. Harold Gross was told by Clancy that such clips were unauthorized and were in violation of the affiliation agreement (Tr. 19752, 19755–61, 19795). It appears that part of the CBS investigation prior to Clancy's call to Harold Gross was a review of the Compensation Reports WJIM-TV had filed.[63] Clancy stated that CBS assumed that when WJIM-TV made the handwritten entry on the off-time for the report, it was an actual off-time rather than the approximate off-time as contained in a report sent by the network to WJIM-TV (Tr. 19760–63 and Bureau Exhibit QQQ). Harold Gross stated he did not know how his specific instructions on clipping were not carried out. Clancy indicated that perhaps the instructions were carried out, but there were exceptions as previously explained by Clancy (Tr. 19797–801).

229. In an effort to resolve the allegation of clipping as contained in an ACLU letter to CBS, Sherck went to New York on September 16, 1974 to meet with Clancy. The specific ACLU allegations were reviewed and Sherck offered an explanation for each alleged network clip. Sherck's explanation was accepted without further checking by Clancy. It was Sherck's position that all deletions (alleged clips) were authorized by the network since they were network promotional announcements for programs that WJIM carried on a delayed basis or had pre-empted. The Sherck explanation did not mention that WJIM-TV had covered network commercials with local commercials. The meeting ended with Clancy requesting WJIM-TV to use the remarks column of the report to give the

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[63] An example of such reports is contained in Bureau Exhibit LLL, p. 4.

reason for any deletion of network programming in the future. Sherck agreed to this procedure (Tr. 19978, 19780, 19805–11).

ACLU Sample of WJIM Clipping—1970–1974

230. The ACLU Exhibit W (as amended) describes 627 instances of clipping from September 15, 1970 to May 10, 1974. The exhibit is based on information taken from WJIM-TV program logs, CBS format logs and WJIM-TV compensation reports. Both Colegrove (WJIM-TV) and Dorothy Boyle (CBS) indicated that station break patterns rarely changed (Tr. 19640, ACLU Exhibit EEE, p. 225). The source material for the "on" and "off" times for CBS network programs are the CBS format logs which are part of the CBS official records and are made by CBS clerks at the time of the broadcast. These same CBS clerks also fill out the program logs for the CBS affiliate WCBS-TV (ACLU Exhibit EEE, pp. 13, 24).

231. Prior to 1974, CBS logs were not always completed for the entire length of a network broadcast. Thus, the log could end with the completion of the credits for a program and not include the "CTN pod." This "CTN pod" is a means used by CBS to fill out any unused time allotted to a network program with promotional and public service announcements that would fill out the time up to the beginning of the station break signified by display of the CBS "eye" logo. The CBS logs have always indicated the precise times for network commercials (ACLU Exhibit W (amended), pp. 1–2, n. 10; ACLU Exhibit EEE, pp. 22–23, 50–67). From this it can be computed by comparing the CBS logs with the WJIM-TV logs if the WJIM-TV actual break exceeds the time allowed by CBS to WJIM-TV. (Compare ACLU Exhibit W (amended), key pp. 1–2, n. 10, and key p. 2, n. 11). One further test for possible clips is the notation in the WJIM-TV logs that the CBS ID slide was aired by WJIM-TV.[64] This would indicate that WJIM-TV had pre-scheduled a clip. If WJIM-TV has pre-scheduled clips of the network programs, a comparison has to be made between the CBS scheduled break and the WJIM scheduled break which is confirmed by the WJIM-TV log entry for actual break from this particular time.

232. GTI stipulated to the accuracy of the entries for ACLU Exhibit W. The original Exhibit W was questioned by the Presiding Judge in that it did not reveal whether, for example, GTI was alleged to have clipped a billboard or a commercial, or whether part or all of a commercial was clipped. The Exhibit W as amended attempts to meet these concerns (Tr. 20631–37, 21125–26).

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[64] The CBS logo as sent out by the network is the signal for an affiliate to commence its local ID together with such commercials or announcements as can be placed in the allotted time. The notation on the WJIM-TV logs of the CBS ID is not the network-originated logo. Rather, it is a slide prepared by WJIM-TV.

233. Argel Ressler testified in this proceeding, and he was a GTI employee who made the entries on the WJIM-TV logs to reflect the actual programming as aired. Where Ressler was required to make several entries on the log for a WJIM-TV station break, his procedure was to get an accurate log entry for one of the several log entries and all other entries for that time period would be calculated from that time. For example, if a station break called for a station identification plus two spot announcements, he would get the accurate time for the end of the first spot and then add on the time noted for the length of the second spot. Also, log entries made by Ressler were rounded off to the nearest five seconds as the WJIM-TV clocks did not always self-correct as they were supposed to (Tr. 20131, 20139, 20153–55). This rounding off process, according to Ressler, resulted in adjustments in the actual time both down and up, but the entries in the WJIM-TV logs should not have been more than 2½ seconds off (Tr. 20203).

234. GTI has introduced into evidence an explanation or classification of certain of the ACLU alleged clips as shown in ACLU Exhibit W (amended). List A of GTI Exhibit DDD (amended) consists of "local material scheduled in accordance with authorized length of station break; deviation caused by operator error, or discrepancy in WJIM and/or CBS Television Network documents, or other presumed explanation." This list deals with 54 of the 627 entries on ACLU Exhibit W (amended). Sherck prepared GTI Exhibit DDD (amended) and it is based on certain assumptions for each of the 54 explanations. There is, for example, an entry for "Hogan's Heroes" on November 1, 1970 (ACLU Exhibit W (amended), p. 7, line 8). The typed portion of the WJIM-TV log, prepared prior to actual broadcast, indicates that there would be 90 seconds of commercials (30-second announcements for Swiss Miss, American National Cougar and Levin) which were all pre-scheduled during a CBS authorized 62-second break. The entries on the log contained a line through the Levin commercial, and the American National Cougar commercial was shown as running for one minute and not 30 seconds. It is unknown who drew the line through the Levin commercial. The entries on the WJIM-TV log, as broadcast, show that WJIM-TV left the network at 7:58:20 P.M. and rejoined at 8:00 P.M., a one-minute, 40-second break or 38 seconds more than authorized. Sherck explains this by assuming the Levin commercial did not run since it was lined through, and the operator then assumed the American National Cougar commercial was actually only 30 seconds as originally entered on the log. This then adds up to 62 seconds, i.e., 30 seconds—Swiss Miss; 30 seconds—American National Cougar; and the remaining 2 seconds for the station identification. Under such assumptions, as made by Sherck, the entire break was within the time allowed by the network, but there was an erroneous entry on the log which suggested an overrun of 38 seconds (Tr. 20889–93).

235. Another of the entries on ACLU Exhibit W (amended), p. 39, lines 6–7, shows that WJIM-TV had pre-scheduled an additional commercial, which entry was subsequently lined through. Also included in the log was the phrase "CBS ID Slide" which was the signal to the WJIM-TV operator to leave the network early. The on and off times for this entry indicated that WJIM-TV had not been carrying the network for one minute, 35 seconds, while the authorized network break for an affiliate such as WJIM-TV for this particular time was 32 seconds. Here, Sherck's explanation involved a "speculation" or "guess" that the operator had some sort of technical difficulty and the operator had let the WJIM-TV prepared CBS logo slide on the air to cover the technical difficulty (Tr. 20899). In an addendum to list A of GTI Exhibit DDD, Sherck dealt with a list of ACLU alleged clips which were caused by operator error. In each case, the alleged clip involves the termination of network programs which preceded locally-originated WJIM-TV programming (Tr. 20499–500). These entries cover the period October, 1970 through September 12, 1972. Twenty-three of the thirty-one entries are for "Love of Life," a network program which preceded the WJIM non-network noon news program. Sherck explained three of the entries as involving a WJIM-TV operator or news director on duty who wanted to disengage the network program early in order to start the news program early. The Sherck explanation for these three instances was said by Sherck to be representative of the other 28 entries on this list (Tr. 20501, 20504, 20507–08). The record shows that GTI did not advise the network of its early disengagement from the network. (See ACLU Exhibit W (amended), p. 26, line 4; p. 26, line 5; p. 36, line 13.)

236. In the GTI second addendum to its Exhibit DDD (amended), 27 entries of the total of 627 clips alleged by ACLU are dealt with as a special category. The GTI Sherck explanation here is that all 27 entries are instances where WJIM "blocked outdated or otherwise inappropriate network promotional announcements" (Tr. 20404). Sherck could not identify what promotional announcements were involved. It was Sherck's belief that GTI would have no reason to delete part of a network program if it was to be followed by a WJIM-TV non-network program. However, he did recognize that WJIM-TV did delete part of a network program prior to a local news show to permit more time for news. It is ACLU's claim that, contrary to the explanation given by Sherck for those 27 instances, the record shows that the deleted network program material was covered not by another CBS promotional announcement, as required by the CBS network agreement, but with a local commercial or a local public service announcement (ACLU Exhibit D, p. 2; Tr. 20404–06, 20920–21). GTI Exhibit DDD, List A, second addendum, states that the instances selected by ACLU are isolated since none of these alleged clips was prescheduled by GTI but actually resulted from operator error or other

similar circumstances. Here, GTI points to Ressler's testimony, a GTI master control operator for 20 years, to the effect that it was not the GTI practice to disengage the network while a commercial was in progress. Rather, the disengagement involved only the outdated promos and the network public service announcements as originally represented by GTI (Tr. 20166).

237. List C of GTI Exhibit DDD (amended) deals with an additional 14 entries of the ACLU alleged 627 clips. All of these 14 instances deal with an ACLU alleged overrun of the WJIM-TV 11:00 P.M. local news program with an alleged late join of the following network program (Tr. 20406). In five of the instances, the late join was not reported to the network, although during the time of three of those five cases, the GTI in-house procedures required that the end and join times should be reported accurately. In the sixth case, the time notation reported to CBS was in error (Tr. 20406–11; ACLU Exhibit W (amended), p. 1, line 7; p. 14, lines 5, 15; p. 14, line 3; p. 15, line 3; p. 45, line 7; p. 56, line 15; and p. 60, lines 2–3).

238. List D of GTI's Exhibit DDD (amended) deals with another 23 of the 627 clips claimed by ACLU. Sherck has classified these 23 entries as all involving deletions of the network caused by "special circumstances," either local or national, affecting program scheduling of Wither WJIM-TV or the network. Eleven of these instances were considered on the record.[65] In only one of 10 of these incidents was a deletion of network programming reported to the network, and this one case did not include any report as required under the comments column of the compensation report. It turns out that in two of those instances, WJIM-TV deleted network programming to carry weather bulletins, but, as previously indicated, such deletions were not reported to the network (Tr. 20414–15; ACLU Exhibit W (amended), p. 58, line 6; p. 23, line 14). Other reasons are assigned to five of these incidents, such as WJIM-TV elimination of network commercials in order to carry public interest programming or a determination to carry a Tigers baseball game or a Big Ten basketball game to its conclusion (Tr. 20925–28, 20935–42). In some instances the non-network sports program carried by WJIM-TV had concluded as much as one hour prior to the network deletion and WJIM-TV had broadcast local programming between the end of the sports program and the network deletion (Tr. 20925–28). In such situations the network could have been joined on time, but Sherck conceded that the operators had no instructions regarding what to do in these situations, except to carry the sports event to its conclusion (Tr. 20930–33). Instances are shown in List D of GTI Exhibit DDD where WJIM-TV scheduled a 60-second commer-

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[65] One of these can be eliminated, as the record developed that an alleged clip of the network movie actually involved the network elimination of part of this program to present a McGovern speech which was broadcast by the network.

cial in an authorized network end break of 42 seconds (Tr. 20934). In three cases almost all of the network commercials were eliminated, and in the network broadcast of the Preakness Race, WJIM-TV eliminated 90 seconds of network commercials. Such instances of network deletions were not reported to CBS (Tr. 20925–28, 20935–40; ACLU Exhibit W (amended), p. 14, line 5; p. 31, line 15; Tr. 20938–42; ACLU Exhibit W (amended), p. 32, line 5).

239. List E of GTI Exhibit DDD (amended) deals with 35 of the alleged 627 clips. this group fo 35 instances are all said to deal with an overrun of WJIM-TV local programming—other than the 11:00 P.M. news broadcast (Tr. 20406). None of those deletions was reported to CBS and all occurred subsequent to the September, 1972 meeting (Tr. 20947, 20421; ACLU Exhibit W (amended), p. 62, line 11).

240. List F of GTI Exhibit DDD (amended) contains 16 entries. Each of these WJIM-TV overruns is explained by Sherck to have been caused by the WJIM-TV coverage of local election returns in 1970 and 1972 (Tr. 20422). Only one of these deletions was reported to CBS, although during 1970 it appears that WJIM-TV eliminated numerous billboards and all or portions of eight network commercials (ACLU Exhibit W (amended), p. 8, lines 4–15; Tr. 20949–50).

241. List G of GTI Exhibit DDD (amended) contains nine entries, all of which Sherck explains were local cut-ins or breaks authorized by the network (Tr. 20423). In three of these instances, CBS did authorize the local sale of these positions during the local news. While GTI did not report any of these deletions to the network and WJIM-TV did not have its compensation reduced because of the deletions, the network's own records would have reflected that WJIM-TV was never ordered for these particular network commercials in the first place (Tr. 20950–52, 20966–67).

242. List H of GTI Exhibit DDD (amended) consists of 35 entries. Sherck explained that these 35 entries all involve network programs broadcast by WJIM-TV on a delayed basis. Network promotional announcements would not be accurate because of the WJIM-TV delayed carriage and GTI would replace such network announcements with local material (Tr. 19723, 20876-77).

243. In summary, GTI has, through its Exhibit DDD (amended), Lists A through H, inclusive, provided its explanation for 264 of the 627 clips alleged by ACLU in its Exhibit W (amended). In addition to the 264 explanations, it also developed that six of the clips alleged by ACLU relate to clipping during the Hughes Sports Network broadcasts (ACLU Exhibit W (amended), p. 66). Mr. John P. Moran is the clearing agent for Hughes Sports Network and he dealt with WJIM-TV. Mr. Moran testified in this case and stated that on occasion he did authorize WJIM-TV to expand network-authorized breraks during Hughes telecasts. The record

does not permit any finding with respect to whether Mr. Moran authorized expansion of breaks for WJIM-TV on the six instances claimed by ACLU (ACLU Exhibit W (amended); Tr. 21008–11).

244. Donald Clancy, the CBS network official who dealt with GTI on affiliation matters, testified in this proceeding. He stated that an affiliate such as WJIM-TV is required to carry network promotional announcements, except where the announcement promotes a program the affiliate does not carry, or the program is carried on a delayed basis. If a network promo is deleted for these reasons, the affiliate is then required to substitute a promo for another CBS program. The network considers the promotional announcements important since it is CBS' way of advertising itself and of attempting to keep viewers on the network beyond the end of that particular program. The CBS network uses promotional announcements for most, if not all, of its programs. Similarly, the network will not permit an affiliate to delete a network public service announcement for material other than local public service announcements (Tr. 19780–92).

245. The GTI witnesses acknowledge that it did not protect CBS promotional announcements or CBS public service announcements (Tr. 20320–21, 20599–600, 21087). Because of this GTI policy, the ACLU Exhibit W (amended) shows a number of such deletions of network programs which extended over a prolonged period of time (ACLU Exhibit W (amended), p. 2, line 13; p. 3, lines 9, 12; p. 4, lines 4, 9, 13, 15; p. 5, lines 2–4, 10, 13; p. 6, lines 4–5, 8, 13; p. 21, lines 1–2, 4, 5, 8, 11, 13, 15; p. 22, lines 2, 4, 6, 9, 10, 13,15; p. 23, lines 2, 4, 6, 9, 11; p. 24, lines 1, 3, 5, 7, 9, 11, 13–14; Tr. 19647–48; Bureau Exhibit F).

The Public File Issue

246. This issue was added by the Review Board (48 FCC 2d 1186) (1974) when it appeared that GTI may have denied access to its 1970 license renewal application to Denise Miller, a former graduate student at Michigan State University. The burden of proceeding is on ACLU and the burden of proof is on GTI.

247. Denise Miller had been employed by GTI from June–December, 1969 as an associate producer of the Martha Dixon Show. Miss Miller also scheduled promotional announcements and public service announcements. In the late summer of 1970, she was working on a Master's thesis and she called on Tom Jones of GTI to inquire if it would be possible to do an in-depth study of the WJIM-TV news operation in comparison with the news operation of other stations as a subject for her thesis (Tr. 16398–400, ACLU Exhibit GG). Jones then talked to James Gross about the request and after James Gross interviewed Miller, the project proposal of Miller was approved (Tr. 18988–90, 23277–80). Miller was then afforded wide-ranging access to the WJIM-TV news operations, including going out with film crews, and this lasted until February, 1971 (Tr. 16520–28).

Miller's research for her thesis was then complete, except her belief that she needed to review the station renewal of license application. Miller then went back to the station in early 1971 and asked Clara Burrell (Harold Gross' secretary) to see the public file (Tr. 16411–12). Miller states Burrell refused her request and succeeding requests met with similar responses. Miller then, on the advice of her faculty advisor on the thesis that such files were public, went back to Burrell and told her the documents were public and she (Miller) had a right to see them. Burrell said the station was then in the process of moving things around and that she would call Miller back. Burrell did not call back and Miller called again and was told by Burrell that the file could not be found (Tr. 16401–07). Miller recalled that she made eight unsuccessful attempts to get the station renewals within a one-week period (Tr. 16404, 16410). Miller notes the inability to see this file in her thesis (ACLU Exhibit GG, p. 6).

248. Clara Burrell was also a witness and she denied ever refusing access to the renewal file or not being able to find it as alleged by Miller (Tr. 18935). She also denied even knowing Denise Miller (Tr. 18935). Burrell had no notes or records of any inspection requests (Tr. 18936–37). Miller also went to see Tom Jones about obtaining access to the files and Jones recalled Miller's complaints about Burrell (Tr. 16430, 18994–95). Miller said she went to see Tom Jones because he seemed to have more authority at the station than James Gross. Jones told Miller that she should talk to James Gross about the matter but Miller declined such suggestion (Tr. 18996–97). Miller denies that Tom Jones ever told her to see James Gross about the public file and states that Jones told her he could not help and not to bother with the Grosses (James and Harold Gross) (Tr. 16404–06, 16443). Tom Jones stated he had no authority at the station over requests to inspect public files up to that point in time and further, he did not then know where these files were kept and he may in fact have told this to Miller (Tr. 19009, 18997–98, 19074). Finally, the deadline approached to send the thesis to the printer and she did not secure the renewal application. Miller completed her thesis without the renewal files and she did successfully complete the requirements for her Master's degree (Tr. 16410, 16442). Before leaving the conflicting evidence in this area, it should be noted that the general theme of Miss Miller's thesis was to be critical of the news and public affairs program operation of WJIM-TV, including a conclusion that WJIM-TV had not lived up to its promises on public affairs. This last conclusion of Miller's was supported by her reference to the GTI reluctance to show her the renewal file (ACLU Exhibit GG, p. 6). GTI states that such conclusions by Miller were in error as the renewal would have shown that GTI had more than lived up to its promise of performance when the 1970 renewal was compared with the 1967 renewal of license application (GTI Exhibit OO, p. 1).

249. In 1973, Harold Gross held two staff meetings to discuss station procedures for the inspection of public files. At this time the WJIM-TV renewal application was being prepared by Tom Jones and it was due to be filed with the Commission on July 1, 1973. It was at the first of these two staff meetings that Harold Gross told Jones that he was one of the persons authorized to make a public file available upon request, providing a member of management was present during the actual inspection of the file (Tr. 19009–14). At the second meeting, Harold Gross told Jones and others present that he wanted signatures of those requesting to see the file on station forms prepared for this purpose. During 1973, members of citizen's groups did seek access to the public files for WJIM-TV and three specific persons were identified as requesting to see the files who were Amanda Wallner, John Able and James Ward.

250. Amanda Wallner was a witness and she was the founder and president of the Lansing Committee for Children's Television (LCCT), a group formed in April, 1973 (Tr. 16516–17). Wallner made several visits to WJIM-TV in 1973, 1974 and 1975 to examine both the public file and the license renewal title (Tr. 16518, 16524, 16530–31, 16538–39). Wallner was not unknown to GTI as she had previously been at the station to record an editorial and she had conversations with Tom Jones during the formation period of LCCT (Tr. 16524). The first of her several requests to see the public files was in May or June, 1973. She was accompanied by Francis Drum, an associate of hers in LCCT. The 1970 license renewal file for WJIM-TV was requested (Tr. 16519, 17525–28). After a wait of some 15 minutes, they were ushered into a conference room and the application was made available. They reviewed the file for about two hours and James Gross was present in the room during the entire time. Wallner said James Gross stared at them when they tried to engage in conversation, thus it was difficult to talk and Wallner found James Gross' presence in the same room to be intimidating[66] (Tr. 16518–24). The renewal application on this inspection did not contain the composite week logs (Tr. 16655–56). It is not clear from the record if Wallner was told why the logs were not available but it appears that Jones did explain on or about July 6, 1973 to a Mr. Able that the composite week logs had been filed in Washington (Tr. 16472–73).

251. On June 12, 1973, Wallner wrote Harold Gross advising of the LCCT interest in children's programming and offered to assist GTI in a review of problems and needs as a part of the license renewal procedure (ACLU Exhibit 2). Jones saw the letter and sent a memo to James Gross with a copy to Harold Gross expressing a view that GTI should at least sit

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[66] There is testimony that James Gross peered over her shoulder for several minutes and asked what she was writing down and that James Gross asked Wallner in a kidding manner if she was preparing a mailing list (Tr. 23350).

down and listen to the LCCT view. Wallner made another visit to the station shortly after her June 12, 1973 letter and the same procedure was followed relative to the request to see the public file including the wait between the request and being ushered into the conference room, only this time Tom Jones was the station official in the room with them (Wallner and her associate this time was Drum) (Tr. 16519, 16524–28, 16554–56). There is considerable testimony on what took place during this inspection. Wallner took what she described as nearly verbatim notes. Wallner said she requested privacy to look over the application. Jones refused and said he had to be there to make sure the document was not "defaced", that he would not sit outside in the hall and watch from there and Wallner could not make a copy of it because the station did not want material taken out of context. Wallner states that throughout this 10-minute exchange with Jones, Jones became very angry and finally relented and left the room. Wallner described Jones as very intimidating. However, when Jones did return to the room, Wallner found his manner changed and he was very cheerful (Tr. 16524–29; GTI Exhibit UU).

252. It is the GTI position that it needed to have a station representative in the room when public files were being reviewed and this policy predates the summer of 1973. GTI has two places for review of its public files—one is at a vacant desk in the executive secretary area and the other is a conference room (Tr. 23302; GTI Exhibit 167, p. 1). Some years prior to this, some students had requested to see the public file and a question of security was presented when a group of students was given access to the files in an unattended area (Tr. 23259–96). James Gross, as a result of this, contacted communications counsel and was advised that it was permissible to have a station representative present when the public file was reviewed and this has since been a normal procedure (Tr. 23295–96).

253. John Able was a witness and he holds a doctorate in mass communications and in 1973 was an associate professor in the Department of Telecommunications at Michigan State University. Members of LCCT asked him what should be available to the public at WJIM-TV regarding its performance. About June 15, 1973, Able along with James Ward, visited WJIM-TV for the purpose of inspecting the license renewal application (Tr. 16449–50, 18951). Ward was a member of Citizens United for Better Broadcasting (CUBB) and LCCT at the time of this visit. Able also belonged to CUBB and LCCT (Tr. 16446–49, 18972–73). They told the WJIM-TV receptionist that they wanted to see the license renewal application and they were requested to write down their names and addresses, which they did. After a wait of 20–40 minutes, Tom Jones came out and escorted them to the executive secretarial area outside the Gross'

offices (Tr. 16451–55, 16458–59). Jones then requested them to sign forms[67] which specified the person who showed them the station documents and the time they spent inspecting such documents (Tr. 16455, 18968; ACLU Exhibit HH, p. 1). They were then ushered into the GTI conference room and given the application to review. James Gross stayed in the room a few minutes but not the entire time and Jones was not present at all (Tr. 16534–36).

254. Able and Ward returned to the station a second time on July 6, 1973 and the same basic procedure was followed by GTI in making the public files available (Tr. 16453–55). The forms were again signed, as neither Able nor Ward objected, although Jones said he would have shown the files to them if they had refused to sign the forms. Able, however, did not know what his rights would be if he refused to sign the form (Tr. 16457, 16471, 18970, 18975, 19030). At this time, Jones had received no instructions from Harold Gross that Jones should show the public file to someone who refused to sign a form (Tr. 19030–31). It was during this second visit that Able told Jones that he wanted to see the composite week logs because he wanted to check the representations in the application as to the number of PSAs aired. Able recalls Jones advising that these logs were not available as they were then either at the Washington office of its legal counsel or had been filed with the FCC with the renewal of license application (Tr. 16472–73). About one month later the station composite week logs were made available (GTI Exhibit CC). The renewal of license application did contain the notation "One exact copy of the program logs with the composite weeks submitted separately herewith" (Tr. 16489; GTI Exhibit TT, p. 5).

255. Because Able had heard about other members of his group being requested to sign forms by GTI if they wanted to see the WJIM-TV public files he wrote to Jones on July 18, 1973 and complained about this GTI procedure (ACLU Exhibit BB). The letter cited the Commission's Public Notice, Mimeo No. 76880, dated November 9, 1971 for the proposition that the Commission's Rules did not provide for any requirement that persons desiring to see GTI public files must give some type of identification.

256. On July 18, 1973, the *Michigan State News* carried an article regarding a CUBB survey to determine if Lansing area viewers had complaints about the WJIM-TV programming. The article also noted that CUBB was considering a challenge to the WJIM-TV license renewal. Tom

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[67] The form is as follows: This is to certify that I, John Able on July 6, 1973 requested to see the 1970 Renewal Application of Gross Telecasting, Inc. (WJIM-TV) My request was granted by Tom Jones and I subsequently inspected these records from 2:30–3:50 P.M. /s/ John D. Able (The material underscored is printed by hand on the form. In addition, there are initials under the signature).

Jones commented on the news article for GTI and said GTI "welcomed the inquiry and would cooperate with the CUBB inquiry." The news article also described the WJIM-TV license renewal application as containing the results of a GTI survey on the public needs and the station's response to those needs (GTI Exhibit HH).

257. Next, Jones telephoned Able on July 19 or 20, 1973 and told Able that GTI may change its procedure. A letter confirming this telephone call was sent by Jones to Able on July 20, 1973 and stated that Able had made a good point about any requirement that a form be signed and Jones would make clear in any future request that the signing of the form was not a requirement for access to the GTI public files (GTI Exhibit GG). Jones also told all GTI personnel authorized to provide station files to the public of his correspondence with Able (Tr. 19204).[68] On the same date that Jones wrote his letter to Able (July 20, 1973), Jones sent a memo to James Gross calling attention to the correspondence between Jones and Able and pointed out that any request that a form be signed as a condition to the inspection of public files should not be made. Rather, it should be made clear to all that this was a mere request, because, as pointed out in Able letter GTI could not require that such a form be signed (ACLU Exhibit DD). It appears that James Gross was in Lansing on the 17th and perhaps the 18th of July but was out of the city on July 19th and 20th (Tr. 24291–92). When James Gross returned he became aware of the Jones-Able exchange of correspondence and James Gross sent a memo to Jones dated July 23, 1973 which was critical of Jones for having undertaken to deal with Able without prior consultation with James Gross or his father (Harold Gross). Further, James Gross was critical of Jones for having been quoted at length in the *Michigan State News* article and concluded with a direction that Jones must obtain prior authorization from James or Harold Gross before dealing with complaints or questions of station policy (ACLU Exhibit EE). It is the position of both James Gross and Tom Jones that the James Gross memo of July 23, 1973 was not critical of the actual positions taken by Jones in answering the Able complaint or in the Jones statements quoted in the newspaper. Rather, it was the unauthorized assumption of authority on Jones' part rather than the substance of what Jones did (Tr. 19050, 19203, 2330–33). Jones was angered by the James Gross July 23rd memo and responded with his July 26, 1973 memo (ACLU Exhibit EE) as well as a face to face meeting. Jones defended his handling of the Able complaint and the newspaper quotes of his statements on the CUBB survey. He was of the view that he (Jones) had done his best to carry out all GTI final mandates and he had done nothing to reflect

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[68] While the Bureau requests a finding that Jones' actions represented a change in policy, Able is not sure if Jones ever represented this as a change in policy and the letter makes no reference to a change in policy (Tr. 16480–81).

unfavorably on GTI either in this instance or any other instance. Jones states that James Gross "agreed factually" that there was no requirement that the form for public inspection of files be signed (Tr. 19202–03). After the Able complaint on GTI use of the form, Able returned to the station sometime between July 20 and August 15, 1973 to again inspect the WJIM-TV renewal and Able was not required to sign the form (Tr. 16464–65). However, GTI did not abandon the use of the form. Rather, it was revised and expanded to require a person desiring to inspect a public file to identify the organization or affiliation and the general purpose of the inspection of records (Compare ACLU Exhibit HH, pp. 1–2 with p. 3).

258. James Gross testified with respect to the use of the form to be signed prior to inspection of a public file. "Mike Bush", said to be a reporter for the *Michigan State News*, appears to have reviewed the WJIM-TV renewal applications for 1970 and 1973 on July 17, 1973 from 4:30 to 5:05 P.M. It is James Gross' testimony that Bush refused to sign the form so James Gross filled out the form and provided Bush with the renewal applications for inspection (Tr. 23327). James Bush was a witness—was a reporter for the *Michigan State News*—and stated he did review the applications on the day in question but the person who showed him the documents was Tom Jones and not James Gross. Bush denied ever meeting James Gross or that he had ever used the name "Mike" Bush and he did not recall being presented with any form to sign before he reviewed the GTI public file. Bush also recalled that during the inspection of the GTI files he talked to Jones in the conference room, that Jones came in and out of the conference room and that Jones sat next to him for a while with the two of them (Jones and Bush) chatting on and off. Jones testified that he did not recognize Bush and to the best of his knowledge had not met with him or recall discussing the GTI public file with Bush (Tr. 24218–20, 24263).

259. By letter of August 12, 1973, Truman Morrison wrote Harold Gross on behalf of CUBB requesting that GTI grant CUBB a 30-day extension of the date for filing a petition to deny (GTI Exhibit CC). Morrison said the reason for such request was that GTI had inhibited in its request for review of the 1970 and 1973 WJIM-TV renewal application off the GTI premises and because the composite week logs were missing. Jim Ward of CUBB also wrote GTI on August 21, 1973 and accused GTI of a failure to cooperate with CUBB in that GTI would not make copies of its renewal application available to CUBB plus the GTI procedures which inhibited review of these applications on the GTI premises (forms to sign and insisting that a representative of management be present) (ACLU Exhibit FF). James Gross responded to both the Morrison and Ward letters (GTI Exhibits MM and DD). Gross denied any uncooperative attitude on the part of GTI and pointed out that by early August, 1973 GTI had expanded the time for viewing its public files beyond the normal business

hours and had made additional copies available of the composite week logs. Also it appears that by August 1, 1973, CUBB had obtained its own copies of the WJIM-TV renewal applications (with the composite week logs) (GTI Exhibit KK).

260. In late 1974 or 1975, Amanda Wallner again went to GTI to review public files. By this time she was aware that a station's public files should contain documents other than the renewal of license application. She particularly wanted to see if the file contained some LCCT letters which were critical of WJIM-TV insofar as they claimed WJIM-TV was not living up to an agreement with LCCT as far as children's programming was concerned (Tr. 16538–42, 16561–65, 16581–82). Wallner knew of five or six such letters that had been sent to WJIM-TV but she found none of them in the file. It also is Wallner's testimony that the public files do not contain a copy of the ACLU Petition to Deny (Tr. 16561–65). However, Pat Winik, Gross' secretary said that the public file did contain a notation that such petition to deny had been filed (Tr. 23184). Wallner returned to WJIM-TV for a second visit in 1975, this time with Jim Wollert (Tr. 16543–44). This time she was provided with more material than the first visit, but, she still could not find the five or six LCCT complaint letters that she believed were sent to the station (Tr. 16583–84). Both CUBB and LCCT had agreements with WJIM-TV, but Wallner did not recall if those agreements were in the file. As a part of the CUBB and LCCT agreements with WJIM-TV, the station was to do an ascertainment study on labor and students. Wallner could not find this in the file drawer which was pointed out to her as containing the public file (Tr. 16585–86). It appears that by 1975 the WJIM-TV public files were contained in two file drawers and the files were divided up into a number of separate file folders. Wallner said she did not examine each of the file orders. Rather, they would be examined to determine if a further detailed review was warranted. If she found a special interest in a particular file folder, that folder would be examined in detail. Wallner felt confident that she did not miss anything in the files due to her method of review (Tr. 16585–86, 16635–36, 23180–81, 23187–89).

261. Mr. Able testified as to a fourth visit to WJIM-TV on October 3, 1975, when he was accompanied by Jim Wollert. Their purpose was the same as before, i.e., examine the WJIM-TV public files and they were not required to sign any forms. Able said he could not find the LCCT and CUBB agreements with the WJIM-TV renewal in the public file and that a part of these agreements was that they would be attached to the 1973 WJIM-TV license renewal application. Able then asked a secretary who was in the area whether there were additional attachments to the 1973 renewal application. She then responded by pulling out another file drawer which contained the two agreements (Tr. 16464–66). This second drawer also contained copies of various amendments to the WJIM-TV

renewal of license application. Jim Wollert of CUBB then complained about the amendments and agreements not being physically attached to the renewal application and GTI responded by physically attaching these documents to the renewal application (Tr. 16464–66, 21183, 23346–49). James Gross noted that the letters portion of the public files occupied about 1/3 of a file drawer (Tr. 23351). It is Mr. James Gross' testimony that he has established procedures for the review of all correspondence about Station WJIM-TV from members of the public (Tr. 23352). He reviews such letters and then routes them to the public file with the designation "LPF". He exercises discretion in designating such letters to be placed in a programming or a non-programming category and states that all correspondence favorable or not to the station goes into the files with the only exception being obscene letters. James Gross' secretary, Ms. Winik, also testified as to the existence of these procedures and explained that she double checks Gross to see that all appropriate items do get into the station public file (Tr. 23352–54, 23182).

The Weather Issue

262. This issue is to determine whether WJIM-TV violated Rule 73.1208 and, if so, the effect on GTI's qualifications. The basic question deals with the facts and circumstances surrounding a charge that WJIM-TV had pre-recorded its late-night weather broadcast some four hours previously and without advising the viewers that the weather broadcast was pre-recorded. *Gross Telecasting, Inc.*, 49 FCC 2d 56 (R.B. 1974). The burden of proceeding with the introduction of evidence was placed on ACLU and the burden of proof on the applicant. Section 73.1208 of the Commission's Rules is as follows:

> (a) Any taped, filmed or recorded program material in which time is of special significance, or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public. For television stations, the announcements may be made visually or aurally.
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> (b) Taped, filmed, or recorded announcements which are of a commercial, promotional or public service nature need not be identified as taped, film or recorded.

263. On October 8, 1973, WJIM-TV began pre-recording the weather segment of its Monday–Friday 11:00 P.M. news and such pre-recording ended on September 15, 1975 (Tr. 23575–76). The practice was started because of a complaint by the WJIM-TV weather person—Dennis (Wayne) Zartman about his working hours (Tr. 18482–84). Prior to October, 1973, Zartman worked the 3:30 P.M. to 11:30 P.M. shift doing a children's show and the six and eleven o'clock weather. Zartman learned that WJIM-TV was planning to return the "Martha Dixon Show" to the air

which would be broadcast between 9:30 A.M. and 10:30 A.M. and Zartman was scheduled to be the co-host of this show (Tr. 18482–84). Zartman had assumed that Diane Kennedy would take over his 11:00 P.M. weather duties and asked Jim Cash to check this matter with Harold Gross. Cash did check and learned on Thursday or Friday that Zartman was to continue with the 11:00 P.M. weather duties. Zartman, upon being advised of this, threatened to quit because of the burdensome hours he would have to work (Tr. 18507). Cash then reported Zartman's reaction to Harold Gross and Gross told Cash to have Zartman see him (Tr. 18489, 23465). The following Monday, Zartman went to see Harold Gross about this matter (Tr. 18489, 23465) and James Gross was present during a part of this meeting (Tr. 23515). Zartman, a GTI employee since 1961, repeated his intention to quite if some accommodation could not be made on his behalf. Several alternatives were discussed which included a suggestion that Dennis Lambert do the 11:00 P.M. weather. However, Zartman suggested that the 11:00 P.M. weather show be taped (Tr. 18485). Zartman based his recommendation on the fact that several months earlier, the National Weather Service had stopped making a routine update of its weather forecasts between 10:00 and 11:00 P.M., and such forecasts would now only be issued if there were a change in the forcast (Tr. 18485–86). Harold Gross approved this proposal and told Zartman to get together with Cash, the Production Manager, and John Bjoin, the Director of the 11:00 P.M. news show, to work out the technical details (Tr. 18487). The question of using any type of disclaimer or notice of the pre-recording was not discussed (Tr. 18489, 23468). During the Zartman-Harold Gross meeting, the question did come up as to how the decision would be made that the pre-taped weather be replaced by Zartman's live presentation at 11:25 P.M. if an update in the forecast was required. Harold Gross suggested that Zartman could visually monitor the weather such as by looking out a window, but it was left up to Zartman to decide when he should return to the station to do the 11:00 P.M. weather broadcast live (Tr. 18488, 18509, 23517). After Zartman's meeting with Harold Gross, Zartman met with Tom Jones on the same date. Jones said he had just heard about the arrangement for the 11:00 P.M. weather broadcast and he (Jones) thought it was "ridiculous" and he was going to tell Gross of his views. However, when Zartman told Jones that it was either this arrangement or he would quit, Jones relented (Tr. 18492). Zartman also had a conversation with Sherck about the proposed use of tapes for the 11:00 P.M. weather broadcast. Sherck was concerned that if CUBB or LCCT found out about this, it would mean trouble (Tr. 18500).

264. Zartman, who is not a trained meteorologist (Tr. 18516) proceeded to put the arrangement into effect. Zartman would obtain his information for his 6:00 P.M. weather show from the National Weather Service teletype (weather wire) on the premises of WJIM-TV. At 5:10 P.M., the

Michigan forecast information was sent out over the weather wire and this data was divided into zones with Lansing and vicinity, including Jackson and Flint, being in Zone 13 (Tr. 18527–28). Zartman also got information on the weather wire on current weather conditions such as temperature, winds, air pressure, which was sent out hourly by the Weather Service (Tr. 18494). This information would then be the facts used to prepare the 6:00 P.M. weather show. After the 6:00 P.M. weather show, Zartman would check the station weather wire to see if there were any updated information on the national weather picture (Tr. 18496). If there were such changes, Zartman would make revisions to his weather map such as moving fronts forward to give the map a more look-ahead approach than displayed on the 6:00 P.M. weather show (Tr. 18496).[69] Next, about 6:40 P.M., following the conclusion of the local news block, the weather show was taped for use during the 11:00 P.M. news (Tr. 23426). Zartman recalled that the Weather Service could issue changes in the 5:10 P.M. forecast as late as a few minutes before 11:00 P.M. (Tr. 18487). This taped version of the weather was then broadcast during the 11:00 P.M. news show at about 11:25 P.M. (Tr. 18498). The weather portion of the news show was preceded by the sportscaster, Tim Staudt, who closed his portion of the show with a lead into the effect that Dennis Wayne (Zartman's air name) is up next with the weather as the news continues (Tr. 23463). The sports and the weather were actually separated by a commercial before the taped weather program commenced (Tr. 23463).

265. The actual format of the 6:00 P.M. and the 11:00 P.M. weather shows was essentially identical as Bjoin testified that he and Zartman had agreed they would "just tape it like the show was live . . ." (Tr. 23410). Thus, both the 6:00 P.M. live weather and the 11:00 P.M. taped weather opened with the camera on Zartman who gave general comments on the day's weather and the current figures for temperature, air pressure, etc. were superimposed (supered) to the left of Zartman. The information that was supered would be current and not part of the tape. Next, Zartman, via tape, would describe the national weather map and after the commercial the program would resume with Zartman giving, via tape, the high and low temperatures for various cities supered on slides of the cities. Sometimes the tape would involve Zartman's use of a satellite map followed by the weather forcast via tape (Tr. 18494–95). In summary, and assuming that Zartman has determined that conditions have not changed enough to require a live 11:00 P.M. broadcast, the entire 11:00 P.M. weather is presented by tape made at 6:40 P.M. on that day except the current temperature, air pressure, etc., which is supered on part of the viewers' TV screen as Zartman is talking (Tr. 18494–95, 18496–97,

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[69] Zartman would also change the forecast to give this a look-ahead approach. For example, if the 6:00 P.M. forecast spoke of the weather this evening, such term would be eliminated for the 11:25 forecast.

23410–11, 18463). Thus, except for the current temperature, etc., the 11:00 P.M. forecast would be based on information from the 5:10 P.M. weather wire and, except for the current temperature, etc., the 11:00 P.M. weather program was over six hours old at the time of its 11:00 P.M. news broadcast (Tr. 18498–99).

266. GTI included no disclaimer—audio or visual—advising the public that the forecast portion of its 11:25 P.M. weather was pre-recorded until September, 1974 following the ACLU petition to enlarge issues (Tr. 23521–23, 18498, 18500, 18506). The disclaimer used by WJIM-TV in September, 1974 was not contained within the weather portion of the 11:00 P.M. news show. Rather, it was placed at the end of the entire news block and stated: "Portions of the preceding program were prerecorded" (GTI Exhibit 55; Tr. 23522). The disclaimer contained within the body of the actual weather show was not used until November, 1974 (Tr. 23523–25; GTI Exhibit SS, line 12). It is John Bjoin's testimony that a disclaimer was used within five or six weeks after the weather taping started, but Zartman testified that no disclaimer was used during his employment at WJIM-TV which ended March 20, 1974 (Tr. 23440–41, 18301, 18506).

267. A few months previously to the commencement of the taped weather show (October, 1973), William B. Ray of the FCC had forwarded to GTI in June, 1973 a viewer complaint for comment. The viewer, Diane K. Hickey, was complaining that an announcement on WJIM-TV's Martha Dixon Show of a daily "very special guest" was deceptive since she was led to believe the guest would be appearing live when it was obvious to Ms. Hickey that the special guest portion of the show was recorded. Mr. Ray requested Gross to comment on the Hickey letter in the light of Section 73.1208 of the Commission's Rules and he attached a copy of this rule (ACLU Exhibit II, pp. 4–5). Gross responded to Ray's letter on June 28, 1973 and quoted from Rule 73.1208 and maintained that time was not of "special significance" for a cooking program "as that portion of the Rules is interpreted by the Commission." Gross went on to state that WJIM-TV does give an announcement at noon that "some of its programs are mechanically reproduced" and makes "the announcement prescribed by the FCC Rules" prior to presentation of delayed public affairs or sports programs where time is of special significance, and Gross denied any intent to deceive (ACLU Exhibit II, p. 2; Tr. 23468).

268. When Zartman commenced taping the 11:00 P.M. weather show, it was his understanding that this procedure would last several weeks to a month until GTI could hire someone to do the job (Tr. 18486, 18508). Zartman suggested during the October, 1973 meeting with Harold Gross that an ad be placed in the *Michigan State News* and *Broadcasting* for a new employee (Tr. 18486). About two weeks after the October, 1973 meeting, Zartman asked Harold Gross how the search was going for a new person (Tr. 18499). Gross told Zartman to check with Jones, and

Zartman did check two or three times (Tr. 18511–12). Harold Gross testified that WJIM–TV was actively looking for a weather person (Tr. 23467), Tom Jones said they did not look for a weather person and management was not actively seeking anyone (Tr. 23467, 18511–12). Zartman said that to his knowledge no ads were placed in the *Michigan State News* or *Broadcasting* (Tr. 18486). Zartman was concerned about the taped weather broadcast and felt it provided a chance for errors, so even though GTI had not told Zartman to seek a weather replacement, he did call one person at Michigan State University who was interested in the job, who turn it down (Tr. 18510–11) and Jones talked to two other persons, neither of whom was hired (Tr. 18500–01, 18511). The taped 11:00 P.M. weather show was terminated in September, 1975 when a new person was hired to do the weather (Tr. 23532–33).

269. Charles Snider was a witness, and he is the Meteorologist in Charge of the National Weather Service Forcast Office at Detroit. He had been in this positijon for 11 years and based on his experience and background, he was found to be an expert with respect to Michigan weather and the procedures of the National Weather Service's Detroit Office (Tr. 18558–60). Many factors are involved in the preparation of a weather forecast including local and world-wide information from multiple sources. All of this data is analyzed by computers and the output of the computers form the basis for the weather forecasts issued by Snider's office (such as separate forecasts for the general public, aviation, marine, agricultural, etc.) (Tr. 18563–65). The primary purpose of the Weather Service's Detroit Office is to provide up-to-date forecasts to the public at all times. The primary means to disseminate this information is via the National Oceanic and Atmospheric Administration (NOAA) weather wire, and WJIM-TV has an NOAA receiving terminal on its teletype circuit (Tr. 18565–66). As previously indicated, Michigan has been divided into weather zones. Snider himself drew the boundaries of these zones, and the zones were designed so that each would be populated by people who would normally receive their weather forecast from one source. Thus, Zone 13 represents an area where most of the population in that zone would receive their weather forecasts from radio or TV stations from the one major city in the area. Lansing is that city for purposes of Zone 13 which zone also covers Ingham, Shiawassee, Clinton, Gratiot, Eaton and Livingston Counties (Tr. 18770). However, this is not to say that other zones are not considered in formulating a weather forcast (Tr. 18597).

270. Snider's office routinely issues weather forecasts at 5:10 A.M., 11:10 A.M. and 5:10 P.M., and this same schedule applied in 1973–74 (Tr. 18558–62, 18565–66). The National Weather Service Office at Detroit depends primarily on television and radio stations for disseminating its information for the general Lansing area (Tr. 18576, 18645). In addition to the fixed times for forecasts to be issued, the Detroit office issues a new

forecast whenever it considers the current forecast to be seriously in error. The test for issuing a revised forecast is when any two of the forecasters on duty at the Detroit office are not satisfied with the 5:10 P.M. forecast as being valid for the rest of the night, then an updated forecast is required (Tr. 18566–68). When an update is required, it is released by the Detroit office at 10:10—10:20 P.M., so that radio and television may have such update in time for their 11:00 P.M. newscasts (Tr. 18576). Once an update has been issued by the Detroit office, the 5:10 P.M. forecast is obsolete (Tr. 18607–08). It is Snider's view that he is providing a "highly perishable product" and it is important to avoid public confusion and not jeopardize public safety when prompt action is required to preserve life or property (Tr. 18570, 18605–06, 18781–83).

271. Gordon Barnes was a witness in this proceeding, and he is a weatherperson for WTOP radio and television (now WDVM) in the Washington, D. C. area. Mr. Barnes has had extensive experience in weather forecasting and is a member of the American Meteorological Society. He was found to be qualified as an expert in meteorology (Tr. 19128–36). Mr. Barnes provides forecast information for a number of radio stations, and it is his practice for the radio stations to call him at designated times and record his voice as he reads his forecast over the phone (Tr. 19137–38). These forecasts are recorded from five minutes to an hour in advance of air time (Tr. 19139). Barnes also provides weekly forecasts, and, for CBS, he predicts weather conditions three, six and twelve months in advance. He also interprets weather conditions for the week just past, and this is recorded on a Thursday or Friday night each week for broadcast on Saturday (Tr. 19128–29, 19140).

272. Gordon Barnes does provide recorded forecasts for TV stations. For example, when he provides a forecast for a television station in Duluth, the station would call him at his CBS office and record his forecast. Barnes would also, during such call, provide instructions as to how the TV station should draw its weather map. Such recorded weather information would conclude with Barnes stating, "This is meteorologist Gordon Barnes for the CBS National Weather Center in New York" and then this would be followed by the local anchorperson who would read Duluth's current conditions (Tr. 19142–43).

273. Mr. Barnes testified that to his knowledge he has never heard a disclaimer being broadcast for a recorded forecast on a station he is familiar with (Tr. 19144). Barnes states that the NOAA radio forecasts are continuous and could have been pre-recorded as much as six hours in advance, but he has never heard a disclaimer (Tr. 19145). However, Barnes only listens to NOAA radio forecasts once or twice a week, and he did not know how often such forecasts are updated (Tr. 19145–46). Barnes only listens to broadcasts of his client stations in cities were he happens to be (Tr. 19142). Barnes constantly reviews his forecasts through extensive

sophisticated equipment located at both his office and home through monitoring every three hours. If conditions are unstable, he would monitor every hour and put out a forecast based on the timing of a predicted event. Thus Barnes considers timing to have a special significance in weather forecasting (Tr. 19146, 19153, 19154, 19174).

274. WJIM-TV has an operations manual which new employees are instructed to read, which in part stresses that weather forecasts should be given prime attention and that only the most current forecast and statistics must be used on the air (GTI Exhibit QQ, p. 3; Tr. 23492).

275. ACLU did a review of the files for the National Weather Service Detroit Office and prepared ACLU Exhibit VVV. This exhibit covers the period October, 1973 to October, 1974. The exhibit shows that from October 8, 1973 to September 24, 1974, the Weather Service issued some 57 updated forecasts for weeknights after 5:10 P.M. and before 11:00 P.M. Such documentation, as is available, indicates that for the same period of time and for the same weeknights, the WJIM-TV 11:00 P.M. weather was broadcast live nine times. That is to say that there were about 48 occasions during the year that WJIM-TV broadcast at about 11:25 P.M. a tape weather forecast based on data contained in a superseded 5:10 P.M. forecast (ACLU Exhibit VV; GTI Exhibit KKK).

276. It will be recalled that Gross and Zartman had discussed during their October, 1973 meeting, the circumstances which would require Zartman to return to the station and do a live weather forecast during the 11:00 P.M. news broadcast (Tr. 18488, 18509, 23517). Zartman gave an example of an instance where he did return to the station to do the 11:25 P.M. forecast live. The 5:10 P.M. forecast called for snow flurries, and when Zartman and his wife came out of a movie theater they noticed that it had begun to snow harder than the predicted snow flurries. He returned to the station that night (Tr. 18502). It is Zartman's position that he is aware of no instance where there was a significant change in the weather which was not caught (Tr. 18525). There is some testimony that Bjoin agreed to assist Zartman on keeping an eye on significant changes in the weather, and to this extent if Bjoin thought the change significant, he would call Zartman at home. It was Bjoin's original view that he had called Zartman back 30 or 40 times and maybe 80 times (Tr. 23438), but this was conceded to be a "bad answer".

277. A sampling of the conditions which caused the Detroit office to change its forecast included "Extensive Fog" October 9, 1973; change from "cloudy with a chance of showers" to becoming sunny and warmer (October 17, 1973). There is some difference between the experts in this area as to what is a significant change. The Detroit office (Snider) believed all changes made under its test were significant changes (Tr. 18788). Barnes terms such changes as "very ambiguous" or "not very critical", but Barnes had changed a WTOP forecast the previous week for "clear to

partly cloudy" to "partly cloudy to mostly cloudy with a chance of sprinkles" (Tr. 18788, 19166). While the ACLU exhibit on the weather data provides a number of examples of instances where WJIM-TV did not have a current forecast because of a revision, some of the examples show a disagreement as to how different weather persons would deal with a situation. For example, on February 1, 1974, the Weather Service forecast for 5:10 P.M. was calling for "snow becoming very light after another inch or two, not as cold, low in the upper teens" but at 9:20 P.M. the Weather Service issued a traveler's advisory calling for "snow with an additional two to three inches. Low . . .low to mid teens" (ACLU Exhibit VV, p. 37). Mr. Barnes reviewed the Local Climatological Data for this date (Tr. 19160) and found that the original 5:10 P.M. forecast was incorrect because it had been snowing all day (Tr. 19180), and that the traveler's advisory should have been issued at 5:00 P.M. rather than waiting until 9:00 P.M. It is not possible to determine what Zartman did on this date or that a disclaimer was aired (GTI Exhibit KKK, Tr. 18501, 18506). Other instances are presented where there is little question that the change was substantial. On June 7, 1974, the Weather Service issued its 5:10 P.M. forecast which predicted "mostly cloudy with a few showers or thundershowers likely late tonight". By 10:20 P.M., the Weather Service at Lansing issued a severe thunderstorm warning and at 11:00 P.M., the Lansing office of the Weather Service issued a further statement that the severe thunderstorm warning was still in effect and the thunderstorm line (which was defined) was increasing in speed. Next, at 11:30 P.M. the Lansing office issued a further bulletin on the storm and requested "immediate broadcast". WJIM-TV did not broadcast a "Severe Thunderstorm Warning" until 11:41 P.M.—one hour and 20 minutes after the first bulletin; 41 minutes after the issuance of the "Special Weather Statement", and eleven minutes after the second bulletin and the scheduled end time for the 11:00 P.M. news program (ACLU Exhibit VV, pp. 69–71; GTI Exhibit KKK, p. 6).

278. It is John Bjoin's testimony that he was sure he would have called Zartman back to the station for the revised forecast for June 7, 1974 (Tr. 23435, 23446). However, when Bjoin was advised that Zartman had left WJIM-TV's employment on March 20, 1974 (Tr. 18484), Bjoin stated that if it was not Zartman it was George Brown or "whoever was doing it [weather] at that time" (Tr. 23458–59). Brown was an hourly employee at this time and required to fill out a time card (Tr. 23563). Brown's time card for June 7, 1973 shows he worked from 10:00 A.M. to 2:00 P.M. and from 3:00 P.M. to 7:00 P.M. (Bureau Exhibit YYY). This same time card which shows the June 7, 1973 entries also contains entries for June 8th and 15th. The entries for Brown show that he worked on the 8th from 10:50 P.M. to 11:30 P.M. for "Sat. [presumably Saturday] Weather" and on the 15th from 6:00 P.M. to 7:30 P.M. for "Sat. Weather". James Gross agrees that if

Brown had worked overtime on June 7th to broadcast a weather show live, he would have submitted an overtime authorization slip—just as he did on April 12, 1974 when he did work from 10:00 P.M. to 11:30 P.M. because of severe weather (Tr. 23608–09).

279. James Gross continued to believe that WJIM-TV had in fact broadcast a weather bulletin before the 11:41 P.M. time the record appears to show. The record shows that WJIM-*FM* did broadcast the weather bulletin at 10:44 P.M. (Tr. 23554, 23550–51, 23605–06). There is no alarm light for the weather wire in the WJIM-TV newsroom. Such alarm light is in the WJIM-*AM* control room and they (radio news staff) are to notify TV personnel and cut a cartridge if necessary (Tr. 23545, 23552). There is a backup alarm light in the master control, but, when the teletype is cleared, the light goes out (Tr. 23553–54). Thus, according to James Gross, the station procedures would have called for the TV to carry and log a special news bulletin prior to the regular 11:00 P.M. news show. As previously indicated, the log shows the bulletin was not carried until 11:41 P.M. (Tr. 23555–56, 23568–69; GTI Exhibit KKK, p. 6).

280. Argel Resler, an experienced master control operator for over 15 years was on duty the night of June 7, 1974, and he made a very clear entry on the logs concerning the 11:41 P.M. special weather warning, but no other such entries (Tr. 23570–71). James Gross did offer another explanation for the apparently missed severe weather watch warning. James Gross assumes that if the weather bulletin was not broadcast prior to the 11:00 P.M. news, which would have been contrary to procedures, it could have been broadcast during the regular 11:00 P.M. news, in which case there would be no entry on the station log, but these theories could not be documented (Tr. 23460, 23435–36, 23555–56; GTI Exhibit KKK).

281. Diane Smith was a witness, and she was a former reporter and news anchorperson for WJIM-TV during 1973 and 1974. She learned of the prerecording of the 11:00 P.M. weather sometime in 1974 while Zartman was still the weatherperson (Tr. 18451, 18456). Smith stated that she had viewed the 11:00 P.M. weather show prior to this, but could not detect that it was recorded and not being done live (Tr.18453). Then about May, 1974, she noticed a disclaimer was broadcast at the end of the entire news show. However, her continued viewing showed that the disclaimer was used only about 1/4 of the time and never in the body of the weather part of the news show (Tr. 18455–56). James Gross conceded that there was nothing to prevent a viewer from concluding that the weather part of the news was live (Tr. 23590).

282. On September 27, 1974 and after the ACLU had filed its petition with the Commission seeking the Section 73.1208 issue, WJIM-TV broadcast an editorial dealing with its taping of the weather (Bureau Exhibit HHH). The editorial stated in pertinent part: "The crux of this 'issue' . . . and 'issue' is a fanciful work for the silliness . . . is the belated discovery

by ACLU that this station has been videotaping its nightly 11:25 P.M. weather report several hours in advance. This momentous revelation str[ikes] the staunch guardians of our liberties with gale force.

* * *

"The *facts* should go on the record. The weather report you see on this channel at 11:25 P.M. is *the latest official* information available from the United States Weather Bureau. If there is any significant late change in the forecast, the weatherman does the program live and the tape is scrubbed. If there is no change in the forecast, the tape is aired."

Labor Issue

283. By *Memorandum Opinion and Order,* 55 FCC 2d 295 (1975), the Commission added the following issue to this proceeding:

> To determine whether Gross Telecasting, Inc. engaged in labor practices inconsistent with the national labor policy, expressed in the National Labor Relations Act, and, if so, the effect of such conduct on the character qualifications of the licensee and its ability to operate its broadcast stations in the public interest.

By *Memorandum Opinion and Order,* 57 FCC 2d 1213 (1976), the Commission placed the burden of proceeding on both the ACLU and the Bureau. All of the facts under this issue can be divided into two basic periods: (a) the events which took place prior to a union election and (b) those events occuring between the election and the conclusion of a contract between the Union and GTI.

284. During the spring and summer of 1973, several employees in the news department at GTI became concerned with inadequacies in the news department. Such concerns centered on inadequate film budget, poor quality of equipment, management's emphasis on feature stories, which the news employees believed were at the expense of late-breaking news stories, low wages and a general feeling that management was not overly concerned about the quality coverage of news. in the past there had been meetings with management and some remedial action had been taken. However, some news employees continued to remain dissatisfied. One was a TV news reporter, Robert J. Grossfeld and another was Dennis Hart, a news photographer. Grossfeld and Hart discussed with fellow news employees the possibility of taking collective action and the idea of forming a union (Tr. 16681–92, 17118–23). Grossfeld was employed in February, 1972 and became a television news reporter in November, 1972. Prior to coming to GTI, Grossfeld had limited experience, having graduated from Michigan State University in 1973 with a non-journalist degree (Tr. 16680–81, 16962).

285. By July 23, 1973, Grossfeld and Hart had contacted the National Association of Broadcast Employees and Technicians (NABET) at its

Washington, D.C. office. NAFET sent Grossfeld union authorization cards and advice on how to start a local union, including advice that Grossfeld and Hart should conceal all organizing efforts from GTI management. Grossfeld and Hart contacted other employees, held organizational meetings and obtained signed union authorization cards from the other employees. Grossfeld sent the signed cards to NABET in Washington (GTI Exhibit GL–19; Tr. 16693–97, 16704–07, 17175–81).

286. On August 2, 1973, NABET filed a petition with the NLRB seeking to be certified as the exclusive bargaining agent for the employees of GTI's radio and television news department (Bureau Exhibit BL–3, p. 4). The NLRB notified GTI of the NABET petition on August 2, 1973 (Bureau Exhibit BL–3). Included with the NLRB notification was a notice GTI was requested to post at the station. The notice was not posted (Bureau Exhibit BL–3; Tr. 16717). Upon receipt of the NLRB notice, the Grosses immediately contacted their labor attorney, Earl Boonstra, who requested that all the NLRB papers be sent to him and he gave general advice on how to deal with the union efforts. Boonstra explained that GTI could not threaten reprisals, promise benefits or interrogate their employees (Tr. 22410–11, 22479–82). GTI also had a right at this time to contest the NABET petition under the Labor Act at the local regional director level and an appeal as a matter of right to the Board in Washington, D.C. GTI did not exercise such rights but consented to the election which was scheduled for October 10, 1973 (ACLU Exhibit AL–7 and Bureau Exhibit BL–5).

287. Between the August 2, 1973 NLRB notice to GTI and the October 10, 1973 election, a series of events occured which are alleged to constitute unfair labor practices. There is a procedure for the employees to have raised these matters with the NLRB at the time (so-called "blocking charges") but this was not done.

288. Harry Coyte was the International Representative for NABET who was assigned to the GTI news employees organizational effort. He came to Lansing in early August and met with those employees who had signed the authorization cards. Coyte advised the employees to deny any knowledge of the union if questioned by management and to record any event which they considered unusual and a possible violation of the labor law (Tr. 16708–09, 16714, 17357, 17595–96, 17648). The employees had expressed apprehension with regard to the security of their jobs and in particular Grossfeld and Hart wanted to know what NABET could do for them if they were fired (Tr. 16916. 16916, 16920–21).[70]

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[70] The general question of evidence on the subjective feelings or fears of employees was the subject of numerous evidentiary objections. Such evidence was admitted but the weight to be afforded will be considered in the conclusions.

289. The Grosses did begin to question news department employees about the union. On August 7, 1973, Ralph Allen was called into Harold Gross' office. At this time, Ralph Allen was a TV anchorman for both the 6:00 P.M. and 11:00 P.M. news (Tr. 22412). In the past, Harold Gross typically had meetings with Allen once or twice a week to discuss the news operation (Tr. 22412). At the August 7th meeting, Harold Gross had the NABET petition on his desk and he asked Allen if he had seen it or knew about the organizing drive. Allen had signed an authorization card and attended meetings, but, he denied any knowledge of the union organizational activity. Gross said there was no subsequent conversation. It is Allen's opinion that Gross was very intimidating. For example, Gross according to Allen, expressed doubt that any union could be formed without Allen's knowledge and asked Allen why he had not informed the company. Gross is also said to have raised his voice during this meeting and stated that the union effort would not succeed just as past efforts had not succeeded[71] and that Gross rewarded those it deemed loyal. Allen testified on the basis of a memo he prepared several days after this incident while Gross testified from memory (Tr. 17286–93, 17356, 17367–72, 22415, 22445–46; ACLU Exhibit AL–15).

290. Harold Gross requested that Martha Dixon, supervisor of women employees, meet with Diane Smith, one of the news reporters and present the company's views on the union to her (Tr. 22417). Dixon did invite Smith to dinner at her home the evening of August 12, 1973. Dixon told Smith sometime that evening of the Gross request that the union be discussed. Dixon mentioned various news employees names to Smith, including Bishop and Grossfeld, looking for Smith to give some confirmation. Smith was non-comital and denied that she was behind the union. Dixon then advised Smith that Harold Gross was opposed to unions and would not allow them in the station. Smith said this made her very apprehensive. Following the dinner, Dixon told Gross of the conversation and Smith wrote a memo of her recollections several days later (Tr. 18328, 18335–38, 22621, 22611; ACLU Exhibit AL–11). Smith and Dixon did have a previous social and business relationship. Dixon had arranged for Smith's employment at GTI (Tr. 22590–91). They had numerous conversations at work and Dixon helped Smith to find a place to live in Lansing (Tr. 22595, 22600–01). While there had been a number of suggestions by Dixon that Smith have dinner with her at her home this was the first such dinner. In addition to the union conversation at the dinner, Dixon and Smith also talked about a number of other topics such as their respective divorces, raising women's consciousness and poetry (Tr.

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[71] This has reference to a previous unsuccessful attempt by GTI engineers to form a union. This apparently was a hotly contested matter with two brothers employed at GTI being on opposite sides of the issue. This will be mentioned *infra*.

22607–10). Diane Smith was well aware of Harold Gross' position on unions. When Harold Gross interviewed Ms Smith for a position at GTI, he asked her as to her feelings on unions and stated he would never allow a union at GTI. Gross also told her that unions were not appropriate for a station the size of GTI (Tr. 17854, 18329–30).

291. On August 13, 1973, James Gross had a conversation with Robert Bishop, Chief Photographer of WJIM-TV and News Film Supervisor,[72] regarding the union. Bishop's duties included interviewing and recommending applicants for employment, recommending discharge of employees, purchase and repair of camera equipment, making out work schedules, teaching film techniques, and supervising film availability, usage and allotment (Tr. 18063–88). Such duties brought Bishop into weekly contact with James Gross in either his office or the newsroom and both on occasion would initiate such meetings (Tr. 22673–78). There is a dispute as to what happened during the August 13th meeting. Bishop relied on his memo of the meeting (ACLU Exhibit AL–9). Bishop said there was one meeting, Gross said there were several meetings (Tr. 22694). Gross also denies that he made any statement to Bishop in effect that if any of the present union organizers would approach the GTI engineers about a union, they would receive a black eye. He also denies relating a bitter story of two brothers (the Jachinshuk brothers) who found themselves on opposite sides of the previous unsuccessful attempt of the engineers to form a union and Gross denied that he told Bishop that there were groups in East Lansing who might be sympathetic to the efforts to unionize (Tr. 22834–38). However, Gross had previously answered interrogatories which tended to confirm the subject matter discussed as described by Bishop. On redirect, James Gross said that the more accurate version of the August 13th meeting with Bishop would be his answers to interrogatories rather than the sworn testimony at the hearing (Tr. 22836–38, 22841–43, 23030–33). During the August 13th meeting, James Gross asked Bishop to find out about the union efforts since it was illegal for him (Gross) to talk to the staff and stated that there would be no union at GTI. James Gross also noted that his father, Harold Gross, had talked to Allen, but, Allen was non-commital (ACLU Exhibit AL–9; Tr. 18116–19, 18126–30, 23397).

292. About this time the Grosses asked George Blaha, Radio News Director, what he knew about the union. Blaha has supervisory duties at GTI similar to Bishop, except on the radio side of the operation, and he was found to be a supervisor under the Labor Act (Tr. 17410). Blaha had regular meetings with James Gross about his department and there are

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[72] Because of Robert Bishop's title and supervisory duties at GTI, the Presiding Judge found Bishop to be a supervisor under the Labor Act and the parties proceeded to present the evidence on this basis (Tr. 18094).

one or two meetings which occured after the NABET petition was filed where the union organizing efforts were discussed. Blaha was asked to discuss the company's views with the staff and keep the Grosses advised on the union situation with the radio news people. Blaha told James Gross that he knew nothing about the organizing effort (Tr. 22417–18, 22699–70, 17411–18).

293. On August 15, 1973, Tom Jones approached Grossfeld and asked him what he knew about the union. Jones at this time was Operations Director of GTI (Tr. 18033) and this position often placed Jones in a position of liaison or a conduit between employees and management, particularly employee problems (Tr. 18013). Jones met Grossfeld in the hall and asked him to step outside by the swimming pool for a moment (Tr. 17968–70). Grossfeld agreed and the two talked on the cement walkway around the pool and Jones after expressing his inability to play his usual role of liaison asked Grossfeld what he knew about the union. Grossfeld denied any knowledge (Tr. 16710; ACLU Exhibit AL–10). There is a dispute in this testimony. Jones states he did not ask Grossfeld about the union (Tr. 18034, 18047). Grossfeld bases his recollection on a memo he prepared two days after the event (ACLU Exhibit AL–10; Tr. 16711). Other questions were presented as to the exact nature of the Jones-Grossfeld meeting. For example, the Grossfeld memo (ACLU Exhibit AL–10) talks of sitting on a park bench in the patio area of the pool. Jones denies this and questions whether there ever was a park bench at the pool (Tr. 17970, 18033–34). Grossfeld states that Jones represented the conversation to be "off-the-record"—Jones denies this as he also denies substantial other parts of the Grossfeld memo (ACLU Exhibit AL–10). Grossfeld did admit that his interest in writing his memo (ACLU Exhibit AL–10) was with a thought of sensationalism which would impress Harry Coyte of NABET (Tr. 17943–45).

294. As previously indicated, the union election was scheduled for October 10, 1973 and during September, Harold and James Gross sent out a series of four letters urging a vote against the union. The letters pointed out that past union efforts at the station had failed. Also during this period, the employees were holding meetings off the company premises to discuss the current events at the station, the letters from management and contract proposals (ACLU Exhibits AL–14, AL–15, AL–16, AL–17; Tr. 16677, 16930–34).

295. A day or two before the election, Bishop was again questioned by the Grosses. He was asked if he had heard anything from the photographers. Bishop replied that he had not, and could get no information from them. Harold Gross told Bishop they were counting on him (Tr. 18129, 23397).

296. Diane Smith also spoke to Harold Gross in September, 1973 about a three-month review of her salary and the belief that she would be given

the job of anchoring the WJIM-TV noon news. Gross advised that he could not legally make any adjustments until after the union election. Gross then asked Smith who was behind the union and Smith did not answer. Gross said he was counting on Smith's support (Tr. 18339, 22407–09, 22711). There was also a luncheon meeting between Dixon and Smith at the Old World Restaurant on October 10, 1973 at which time they speculated as to the outcome of the election. Dixon expressed a belief that a defeat of the union would not benefit the employees and Smith expressed no opinion (Tr. 18340–41, 22612).

297. Harold and James Gross also discussed the upcoming election with William Long, a TV news reporter in early October in connection with an offer to Long about the possibility of leaving his job as TV news reporter in order to replace Thomas Ray as assignment editor with a salary increase (Tr. 22702–07, 22420–24, 17464–76). The Grosses discussed their philosophy about unions and asked Long how he felt about unions. Long said he had no love of unions. Gross asked who was behind the union organization and Long said he did not know. The meeting closed with Gross stating that he wanted Long to have the job, "depending on how things go" (Tr. 17470). Long interpreted this to mean depending on how the union vote turned out (Tr. 17464–75).[73]

298. On October 8, 1973, Harold and James Gross held a dinner for the news employees at the Starboard Tack Restaurant. Martha Dixon and Earl Boonstra were also present. After cocktails and dinner, Harold Gross discussed the management position and urged a vote against the union and he mentioned earlier unsuccessful attempts to form a union at GTI. Harold and James Gross had previously asked their counsel (Boonstra) concerning the perimeters of the remarks which they could make (Tr. 22427). James Gross and Earl Boonstra also made comments and then the meeting was opened up for questions. Grossfeld asked the first question in an aggressive manner. Others asked questions on wages, employee benefits and need for more photographers. Gross often turned to Boonstra for advice as to how a question could be answered and generally Gross advised that GTI could make no commitments on the terms and conditions of employment while the NABET petition was pending. The questioning ended with another question from Grossfeld. He asked what could be done for him. Harold Gross started to respond and Grossfeld interrupted the response and accused Gross of being evasive in his answers. Harold Gross then responded angrily that apparently the company could do nothing for Grossfeld. On this note, the dinner and

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[73] On October 10, 1973, Long did have also a conversation with Dixon about union matters. However, this appears to be based upon a long-standing family acquaintance going back several generations. Dixon did express a hope that Long would vote against the union (Tr. 17533, 17464, 22616–17).

meeting ended (Tr. 16725–27, 18131–34, 18192–205, 18252–53, 22424–31, 18196, 22683–84, 18193).

299. Either later the night of the dinner (October 8, 1973) or the next night, Grossfeld and Hart[74] returned to the station in the evening to talk with Tim Staudt, the TV sports announcer and Dennis Zartman (TV weatherperson) about the union. Sherck and James Gross were standing in the doorway of the newsroom and Grossfeld asked Gross if he could talk to him. Gross and Grossfeld then walked to James Gross' office and Grossfeld advised that he assumed Gross knew that he and Dennis Hart were the organizers of the union. The meeting was on a friendly basis and Grossfeld said he had no ill will toward him or his father. The meeting ended with James Gross' belief that the union would lose the election. Grossfeld disagreed and bet Gross a dime on the outcome (Tr. 16729–33, 17135–36, 22685–80).

300. The election was held on October 10, 1973 and NABET won.[75] Grossfeld was the union observer and John D. Grover was the observer for GTI. Both observers certified the election was conducted fairly (Bureau Exhibits BL–9 and BL–10). On October 18, 1973, the NLRB certified NABET and the exclusive representative for all employees in the bargaining unit (Bureau Exhibit BL–11).

301. Following the election, Harold and James Gross met in Harold Gross' Office with Sherck and Boonstra. Harold Gross was shocked by the results of the election. However, Boonstra recommended against any challenge to the election which advice was accepted. Boonstra then told them that they would be contacted by NABET about contract negotiations. Gross appointed Boonstra and Sherck as the GTI negotiating team and charged them to negotiate "a contract that was good for the company and that was workable as far as the operation was concerned (Tr. 22432–36).

302. Shortly after the union election, the news employees elected union officers. Grossfeld was elected temporary president and Hart temporary vice-president. The positions were temporary because it was not then clear if the WJIM unit would have its own local or be part of another local union (Tr. 16768–69, 17657–58). At this point, an examination begins of certain events which involved the operating practices of the bargaining unit employees. The news department personnel are required to deliver to the master control operations, the film scripts and other material needed for news programs prior to the start of the news program. It was the view of those in the control room that the material was arriving too

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[74] Here again there is a conflict in testimony. James Gross said Hart was not with Grossfeld this night. Both Hart and Grossfeld say Hart was present (Tr. 16729–31, 17135–36, 22877, 16731).

[75] A total of 20 ballots were cast. The union won 13 to 5 with the NLRB not counting two of the challenged ballots (Bureau Exhibit BL–10).

close to the start of the program. This was a continual problem at the station (Tr. 17964, 18135, 18894). As far back as November 6, 1972, James Gross had issued a memo that such material had to be in the control room one-half hour prior to air time (GTI Exhibit GL–2, p. 3) and master control room operators had repeatedly requested action to eliminate the problem (Tr. 18883, 18892–96, 18911). On September 25, 1973, Jim Cash sent a memo to the news department that all material for the news program had to be turned over to the engineering department no less than 15 minutes prior to air time for the news program (Bureau Exhibit BL–7). Cash had a follow-up memo on October 1, 1973 which singled out the noon news (GTI Exhibit GL–2, p. 6). Next, on October 11, 1973, the day after the election, James Gross wrote a follow-up memo to the news department and Gross supported the Cash memos and directed that the material be in the control room at least 15 minutes before the start of a news program. Gross also said he had directed engineers to log any infractions of the 15-minute rule on a discrepancy sheet and state the time and person responsible for the late delivery (Bureau Exhibit BL–12).

303. James Gross stated that during the period September 25 to October 11, 1973 both Onken, the chief engineer, and John Bjoin, the news show director, had described to him the problems with late delivery of news materials (Tr. 22116–20). Gross did not know when the news material was actually placed in the projectors and James Gross did not talk to anyone in the news department between his conversation with Onken and the preparation of his memo on the 15-minute rule (Tr. 22886–87).

304. At this time the 15-minute deadline was posing problems for Bishop and other news photographers, particularly for the 6:00 P.M. news show. The photographers knew that WJIM-TV broadcast syndicated programming between 5:00 P.M. and 6:00 P.M. would tie up one of the two projectors in the master control room. Thus the engineers often did not mount news material in the projectors as soon as received. Further, they believed the master control operators could mount and thread the news film in only a few seconds (Tr. 16745, 17137–40, 17478–81, 18037, 18130–40).

305. On the night of October 11, 1973, Bishop was delivering the news material to the master control room and Grossfeld was standing in the hall in front of a window in the control room. William Hineman was the master control operator on duty and he noted on his discrepancy report that the Bishop had brought in slides at 5:47 P.M. and Grossfeld and Bishop had brought the film at 5:52 P.M. (Bureau Exhibit BL–13; Tr. 18897–98).

306. On October 12, 1973, James Gross wrote to Bishop and Grossfeld noting the late arrival of the news material and stated that the operators would be instructed not to accept any news material after the 5:45 P.M. deadline (Bureau Exhibit BL–14, p. 1). This memo was not sent to John Bjoin (Tr. 22891). Grossfeld responded the same day and told James Gross

he had nothing to do with the incident, since as a reporter, it was not his duty to deliver such material to the control room, and, in any event, he had simply been a bystander in the hall. Grossfeld requested that the discrepancy report be corrected to delete his name. James Gross did not change the discrepancy report (Bureau Exhibit BL–14, p. 2; Tr. 22891–92). Late delivery continued to be a problem but reprimands were not regularly issued. Some reprimands were issued however and John Bjoin was cited and Will Murphy was cited for bringing in news materials late. Murphy's citation was on February 20, 1975 (GTI Exhibit GL–2, p. 7).

307. On October 12, 1973, Harold Gross issued a no-solicitation notice prohibiting solicitation by an employee during working time. The notice was posted on the employee bulletin board with a carbon copy noted as being sent to Grossfeld (Bureau Exhibit BL–15; Tr. 22569). The language of this notice had been cleared by Harold Gross with Earl Boonstra, but Boonstra did not know about the copy to Grossfeld. Gross said he sent a copy to Grossfeld because of his attitude at the Starboard Tack dinner and, because based on a conversation with James Gross, Harold Gross considered him as the representative of the local union (Tr. 22492).

308. Grossfeld felt that his being copied on this memo constituted a harrassment of him by GTI. He also thought the no-solicitation memo represented a change in company policy. For example, in the past there had been solicitations during company time for the employee sports pool, contributions for the United Fund Drive and a Christmas present for Harold Gross (Tr. 16757–60, 18147–48, 22495). Solicitations did continue at the station following issuance of the notice (Tr. 16760, 22570, 22897).

309. The master control room operators had made requests that the master control room be off limits to unauthorized personnel. Such a rule existed but was not enforced. The master control room operators did not want to be distracted by unauthorized persons engaging in conversation and they did not want people using television announce booths[76] for fear that pre-set tape could be disrupted or that someone using one of these booths would press the wrong button and their voice would be broadcast over the air. James Gross was aware of these complaints (Tr. 18902–04, 21891, 22726–28).

310. James Gross talked to Carl Onken about this two or three weeks prior to October 12th. Onken wanted the unauthorized use stopped and Gross asked if other facilities were available for TV people to prepare their news cartridges. Onken said the TV news people could use the radio facilities to prepare the news cartridges. Onken believed the facilities for radio and TV were suitable for this purpose and he told Gross of this belief. James Gross, based solely on the Onken recommendation, wrote a

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[76] These announce booths were inside the control room area.

memo (Tr. 22725–26, 22910) which placed the TV announce booths off-limits, with certain exceptions, and directed that all future news cartridges for all TV and radio be produced in the radio news facilities "and there will be no exception" (Bureau Exhibit BL–16).[77]

311. The TV news employees had regarded the TV announce booth as being used almost exclusively for the preparation of news cartridges and that, in this respect, a standing policy was being changed. The employees complained that the radio announce booths were not soundproof since they would pick up sounds of telephones ringing, typewriters, police monitors and voices (Tr. 16762–63, 17300–01, 17485). Further, because of the heavy demand by both radio and TV news personnel to prepare for a 6:00 P.M. news show, the radio announce booth was not acceptable (Tr. 17296–98, 17449–50, 17485–86, 18263–65). The radio and TV news reporters complained to Bill Long about this policy who, in turn, complained to James Gross. Also Grossfield asked Jim Cash to remedy the problem. These complaints brought no change in the policy (Bureau Exhibit BL–16; Tr. 16945–46, 17348, 17542, 22910). Gross testified that the TV control announce booth policy had "always" been the policy of WJIM (Tr. 22899–903). However, he had stated in response to interrogatories that it was a new policy. A stipulation was entered into which provides that the use of the word "policy" in response to the interrogatories was with regard to a new employee's use of the master control room (Tr. 23045, 22905–06).

312. The lock on the employee entrance to the building was changed on October 17th. Security was not a new problem and there had been problems with vandalism, unauthorized persons entering the building and missing equipment (Tr. 17951, 17998–005). Various measures had been used in the past such as keeping the door locked, installing a doorbell, installing an electric latch, adding a steel plate and at one time a guard was placed at the door when a cigar store Indian prop was missing (Tr. 17953–54, 17996–18007). On several occasions the locks had been changed and the new keys were distributed on the basis of need. However, this did not work too well as keys would be loaned or duplicated (Tr. 18042–43).

313. In late October, James Gross ordered the locks on the employee entrance to the building changed. James Gross said he took this action because on October 17, 1973, the *Detroit Free Press* ran an article which quoted verbatim from certain in-house memoranda which was discovered to be missing from Tim Staudt's desk at GTI (Tr. 22796–98).[78] James Gross immediately ordered Lloyd Tremper to change the lock and give new keys only to those employees who had a need for one (Tr. 22796–98). The only

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[77] A previous prohibition of the use of the TV announce booth facilities had been issued with respect to trainees (Tr. 17933–17936).

[78] The memos re the Lansing Tennis Club.

employees who got new keys were the engineers, because GTI reasoned they worked odd hours (Tr. 16775). Bishop, Lambert and Grossfeld had keys prior to the lock change but they did not receive new keys. Grossfeld and Bishop asked for new keys from Tremper and James Gross, but these requests were denied without explanation (Tr. 16772–73, 18150–51, 18253). As a result, the news employees could obtain entrance to the building by use of the door's buzzer system. The employee seeking entrance would press a buzzer which would signal the control room. An employee in the master control room would, if satisfied, press a buttom which would release the electric latch and permit the door to be opened. Frequently the wait was a few minutes for this procedure to be completed because the engineer could not leave this other duties. It was represented that these delays impaired the news department's ability to perform its duties. For example, Dennis Lambert testified that he was unable to broadcast an interview on a local fire (Tr. 18252–56) and Robert Bishop relates how he was once required to climb the fence and use another entrance to cover an emergency story which broke after 11:00 P.M. Grossfeld was angered because of the change in the lock and failure to obtain a new key and believed this was a change in the employee's condition of employment and part of a pattern of harassment (Tr. 18186–87, 18252–56).

314. On October 9, 1973, Grossfeld during the 6:00 P.M. news, aired an interview with Dr. Raymond Helfer, of Michigan State University. Dr. Helfer is an expert on the subject of child abuse, neglect, and families suffering from these problems. Dr. Helfer had complained on October 10th about the way this story was presented. On October 12th, James Gross by memo requested Bill Long to supply the material used for the Helfer interview (Bureau Exhibit BL–17, p. 1).

315. It appears that when Grossfeld prepared the story on the Helfer interview, he backdropped the interview against some pictures obtained from the police, which showed battered, abused and dead children (GTI Exhibits GL–6, GL–20). Helfer said he was shocked and found it appalling, violated accepted journalistic practice,[79] demonstrated crude taste and that such presentations could have an adverse affect on some of his patients (GTI Exhibit GL–6). At Helfer's request the Helfer interview broadcast was not repeated in the 11:00 P.M. news.

316. On October 15th, James Gross, wrote Boonstra about the Helfer complaint. Gross does not believe Boonstra responded to the October 15th letter (Bureau Exhibit BL–18; Tr. 22460). Next, Grossfeld was called into James Gross' office on October 18th and told the Helfer complaint was a serious problem. Grossfeld started to tell his side of the story but was stopped and told to put it in writing (Tr. 16782–85, 22730–31). Grossfeld

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[79] Helfer claims there is a journalistic practice of advising him of the proposed changes before the broadcast.

did submit his explanation by memo to Gross on the same date. He advised Gross that he had been encouraged to include the pictures of injured children by the state police and that the Helfer interview when combined with the pictures was an honest presentation of the serious nature of the problem (Bureau Exhibit BL–17, pp. 3–4). James Gross then called Boonstra and advised he was considering disciplining Grossfeld but requested advice in light of the union situation[80] (Tr. 22923–25).

317. On October 18th, Bishop told James Gross that Grossfeld was giving him a hard time about the persons assigned to him as photographers (Tr. 22748). On October 18th, Gross wrote a memo to Bishop and wanted to know what photographers had been assigned to Grossfeld, and the number of stories on the film footage used the stories. Bishop responded to the Gross request the next day (Bureau Exhibit BL–19, pp. 2–3). Bishop showed the Gross memo to Grossfeld and Grossfeld wondered why Gross wanted the information. Bishop said he thought the Grosses were looking for evidence of wasted film but this was no problem as the statistics showed that Grossfeld had not overshot film (Tr. 16939–40). Bishop's report to Gross showed that Grossfeld had worked with each photographer, but principally with Hart (Bureau Exhibit BL–19). Gross determined that Grossfeld's complaint to Bishop was unwarranted and dropped the matter (Tr. 27749).

318. On October 19th, Harold Gross wrote to Boonstra about Grossfeld's stories on the Helfer interview and the Henson story. Copies of the complaints were attached on these stories. Boonstra marked this memo with the words "Grossfeld Investigation" and told his secretary to open a file on Grossfeld (Tr. 22503). The Henson story was reported by Grossfeld in March, 1973. It appears that Dr. Clyde Henson had resigned from the Lansing Model Cities Policy Board and made some general allegations against those administering the Model Cities Program. The specifics of the charges were provided to the city attorney in a taped interview and on March 26th Tom Jones learned that the taped interview would be made available to WJIM–TV. Grossfeld was assigned to do a story. During the story, Grossfeld commented that Henson was "confused, if not paranoid" about the Model Cities Program. Before the broadcast of this story, Henson left for an extended trip to Europe (GTI Exhibit GL–7, pp. 104; Tr. 17088, 17903–07). When Henson returned in May, he contacted WJIM–TV about the story. Jones sent Henson a transcript and offered Henson a chance to respond (GTI Exhibit GL–7, p. 5; Tr. 17913–17). Jones then informed Gross that Henson was upset by the "confused if not paranoid" comment and that Jones had offered Henson a chance to re-

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[80] James Gross dealt with this matter again in his memo of November 2nd which also considered two other stories of Grossfeld. This will be considered *infra*.

spond.[81] Also, in May, Gross discussed the Henson story with Grossfeld and Grossfeld defended his use of the words "confused" and "paranoid". Gross said he did not think that Grossfeld was qualified to make such a determination about Henson. Gross indicated to Grossfeld that he could understand why Henson was upset because while in College he had known Henson as a "typical eccentric college professor". Grossfeld was not told to tone down his language by Gross nor did Gross suggest that Grossfeld make any changes in his future conduct (Tr. 229515–19). On August 12, 1973, Henson complained to the FCC about the story and claimed the story was part of an attempt by GTI in ingratiating itself with the Lansing City Counsel Committee on CATV matters and that he (Henson) had not been given an opportunity to respond (Bureau Exhibit BL–20, p. 2). ACLU learned of the Henson complaint to the FCC and made it part of its Petition to Deny filed in mid-October which was the first GTI was aware of this complaint (Bureau Exhibit BL–20, p. 1).

319. When Harold Gross heard of the Henson complaint to the FCC on October 19, 1973, he wrote Boonstra. However, on this same date, Boonstra wrote to James Gross and included a series of questions that should be considered in evaluating Grossfeld's conduct. The questions dealt with similar action by other newsmen and industry practices of taking action against a newsman for such conduct (Bureau Exhibit BL–51).

320. On October 26th, Gross wrote a memo to Grossfeld which stated: "The beard is starting to look a bit messy again. Trim it up". Grossfeld replied the same day by memo stating he had trimmed his beard (Bureau Exhibit 21, pp. 1–2). The issue of grooming standards for employees had been a matter of long-standing concern to the Grosses (GTI Exhibit GL–5, pp. 11–13 and 17–24; Tr. 17954–56).

321. After James Gross had the discussion with Grossfeld, he offered Helfer an opportunity to respond. Also, Gross during this period, had talked to Bishop and Tom Ray about the Grossfeld stories. Bishop believed Grossfeld "went overboard" on occasion. James Gross states Bishop told him that when Grossfeld was editing the Henson story, Bishop asked Grossfeld if the comments on Henson as being "confused" or "paranoid" were not too rough. Grossfeld is said to have responded to Bishop that it did not matter as Henson was going to be out of town anyway. About this same time, Tom Ray, formerly the assignment editor, told Gross that he had spent the better part of the day trying to straighten out a complaint from one of the WJIM advertisers which concerned Grossfeld's so-called West Side Story (Tr. 22114–15, 22732–39).

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[81] Henson stated in a complaint to the FCC, considered *infra* that he had not been offered a chance to respond.

322. The West Side Story was broadcast on May 7, 1973 concerned two fire-bombing incidents in a predominately Black section of Lansing. In one case, a truck had been set on fire, its owner robbed and his children's lives threatened. In the other story, a fire bomb had been thrown into the residence of a white family. Grossfeld's story consisted of an interview with a West Side resident who feared for his security (GTI Exhibit GL–8, pp. 1–3; Tr. 22110–12). Gerald Lett, a clothing store owner who advertised on WJIM–TV and his uncle, Richard Lett, Lansing's human relations director, complained that the Grossfeld story created a false impression about the West Side. Lett's store is about two blocks from the residential fire bombing. Bill Ray, in his conversation with Lett, was satisfied that there was no widespread unrest on the West Side as the Grossfeld story suggested (Tr. 22102–03, 22123, 22743, 23393–95). Gerald Lett stated that after his conversation with Ray, WJIM–TV did send another news crew to the West Side to do a second story. However, Ray said this second story was not aired (Tr. 22105, 23394–95).

323. James Gross reviewed the questions Boonstra suggested he answer about Grossfeld (letter of October 19th) and James Gross concluded that Grossfeld had made an error in news judgment and an effort should be made to rehabilitate Grossfeld and see if GTI could not get him back on the track (Tr. 22741–43).

324. Next, Gross wrote a memo to Grossfeld on November 2, 1973 and noted the complaints received by WJIM–TV on the Helfer, Henson and West Side stories and concluded that Grossfeld's coverage of these stories creates serious doubt on Grossfeld's news objectivity and any future complaints will result in disciplinary action up to and including dismissal (Bureau Exhibit BL–17, p. 5).

325. It appears that other than these three incidents, Grossfeld was universally praised for his ability as a news reporter. Allen found Grossfeld to be "extremely competent, far above average", Tom Jones found him "highly competent" and Grossfeld during his employment at GTI, had worked on two documentaries, one of which had received an Associated Press first-place award (Tr. 17881, 16898–99). When Harold Gross transferred Grossfeld from the radio to the TV news staff, he issued a memo to the staff which described Grossfeld as "aggressive and hardhitting" and James Gross said he was a "darned good reporter". By November, 1973, Grossfeld had been involved in hundreds of news stories for WJIM–TV and except for the three stories (Helfer, Henson and West Side) the indications were that his job performance was more than adequate (Tr. 22742, 16797–99, 16817–18; ACLU Exhibit AL–58).

326. When Grossfeld received Gross' critical memorandum, he was angered and upset. He viewed the memo as harrassment and a further step towards his ultimate discharge (Tr. 16799–800). Grossfeld showed the

Gross memo to Tom Jones and Jones regarded the memo as "ridiculous". Jones did talk to Gross about the memo, but the memo was not changed (Tr. 17885–87).

327. Then on November 5th, Grossfeld responded to the November 2nd Gross memo. Grossfeld's memo advised Gross that he could not understand the memo as Gross had previously written off the three complaints as the "ravings of hysterical people". Grossfeld further stated that in light of the FCC investigation and the news department's vote to affiliate with a union, he believed that the memo was a harrassing tactic looking toward "removing me from my present position" (Bureau Exhibit BL–17, p. 6). Grossfeld and Gross did not further discuss the matter, but Gross continued to insist his purpose was to get a good reporter back on the right track (Tr. 16801, 22742, 22922). On November 6, 1973, Grossfeld wrote to Harry Coyte and observed that the GTI pressure on him was more than he expected and wished that GTI would fire him and get it over with (ACLU Exhibit AL–19).

328. Next follows the facts with respect to the actual discharge of Grossfeld and Hart. It involves a charge of claimed false entries on time cards. On Thursday, November 8th, Grossfeld decided that because of the pressure and harrassment he would take Monday, November 12th off. Grossfeld was not sure just what he would do on Monday, but one possibility was to see an uncle that was a psychologist in a Detroit suburb. It was Grossfeld's belief that he had worked 8–11 extra hours, so he was entitled to compensatory (comp.) time (Tr. 16844–50, 17057). Grossfeld asked long for the day off on comp. time but Long said he wanted a memo from Grossfeld as he believed he might receive an inquiry from the Grosses (Tr. 16847–55, 17498–500). Grossfeld then wrote Long a memo and stated he was going to Detroit Monday morning to see the "Doc" and believed he would not feel too good for the rest of the day. Nothing was said about sick leave or comp. time. Grossfeld did offer to work Saturday so Long would not b caught short (Bureau Exhibit BL–24). Long knew the memo was false and he checked his schedule to see if there would be any problem. Noting none, Long wrote on the bottom of Grossfeld's memo, "R.J. No Problem . . . Roz works all sat. Get well. hope *he* doesn't find anything wrong" (Bureau Exhibit BL–24; Tr. 17582–84). As indicated Grossfeld did not indicate sick or comp. time in his memo. However, Long apparently then believed Grossfeld was going to use sick leave and he wrote on his desk calendar "RJ at Doc" in the November 12th space (Tr. 17586–87; GTI Exhibit GL–32). After Grossfeld had met with Long and had the approval of his November 12th leave, he met Hart. Hart said he too had been thinking of a day off and wanted to go to Chicago to see people at TVN (TVN is a news network which at this time was the fourth largest network in the country). Hart was also of the view that he had comp. time accumulated. Grossfeld agreed with Hart's suggestion, i.e.,

they both go to Chicago on Monday to see people at TVN. Hart then asked Bishop for the day off and told Bishop he wanted to go to Chicago. Later that same day, Grossfeld told Long that he was going to Chicago instead of Detroit and Long did not object. The next day Bishop gave Hart permission to take Monday, November 12th off (Tr. 17156–58, 18232–33).

329. On Monday, November 12th, Hart and Grossfeld did drive to Chicago and discussed job possibilities with Michael Keating of TVN. The interviews concluded and Hart and Grossfeld spent the rest of the day at a museum and returned to Lansing that evening. No problems were caused at GTI by Hart's and Grossfeld's absence according to Bishop and Long (Tr. 16857–59, 17159–60, 17507, 18165).

330. Subsequent to November 12th, Hart and Grossfeld filled out their time cards and entered their normal work schedule for November 12th. Hart also requested 14 hours overtime pay for this particular pay period (ACLU Exhibit AL–20, pp. 21–24; Tr. 16860, 17158, 17160–61). Both Hart and Grossfeld turned in their time cards on November 19th to their respective supervisors, Bishop and Long (Tr. 23152–53). At this time, Long was of the view that Grossfeld was going to take the day on sick leave, he did not check the entry for the 12th. Rather, he signed Grossfeld's card as submitted. Bishop did the same on Hart's time card (Tr. 17509–10, 17589, 18165; ACLU Exhibit AL–20, pp. 22–23).

331. James Gross states that he learned on November 12th that Hart and Grossfeld were off sick on the 12th and on Novmeber 21st, Gross received the time cards from Lloyd Tremper (GTI's accountant). It was GTI policy that Gross had to personally approve overtime payment and he approved the requests for overtime which included Hart's request for 14 hours (Bureau Exhibit EL–26; Tr. 17493–94, 22752–60; GTI Exhibit GL–35).

332. On November 23rd, the day after Thanksgiving, Gross called Bishop into the office. Gross asked if Hart was off on November 12th and Bishop said yes. According to Gross, he then asked Bishop if Hart was sick and Bishop replied that Hart had called in sick and volunteered that Hart was sick of working and believed that both Hart and Grossfeld had gone to Chicago. Bishop has a different version of this event. Bishop states that when he went to Gross' office on November 23rd, he was not sure of the date Hart was not there and told Gross he would get back to him. In the afternoon of the 23rd, Bishop told Gross that it was Monday and that Hart had called in sick on Monday morning (Bishop knew this was not true). Bishop then states that Gross then asked about Grossfeld's whereabouts on the 12th and Bishop replied that he did not know (Tr. 18165–66). On the same day (November 23rd), Gross telephoned Boonstra and told him about the Hart and Grossfeld time cards and asked Tremper to give him Grossfeld's time card. Boonstra advised Gross to talk to Hart

and Grossfeld and get their side of how each claimed to be present on the 12th for a regular work schedule (Tr. 22776–77). So on Novmeber 23rd, when Hart and Grossfeld returned from assignment that day, each had a memo summoning them, as well as Bishop and Long, to James Gross' office. Grossfeld went into James Gross' office first and Sherck was present to take notes. Grossfeld acknowledged that he had shown that he worked his regular hours on November 12th when in fact he had not worked. Grossfeld explained that this was standard procedure. When Grossfeld wanted to give more of an explanation, he was told to put it in writing. James Gross said this was a serious matter and the meeting ended (Tr. 11866–67, 22083–84, 22231–34, 22765–67, 22945–47).

333. Hart was next to go into Gross' office and he was asked why he filled in his time card to show he was working on November 12th, and Hart suggested that he made a mistake. Hart agreed that he also had put in for overtime for this same pay period. Hart was told by Gross that this was serious and that it would be taken under advisement (Tr. 17162–63, 22084–85, 22767–69).

334. Long followed Hart into Gross' office. Long acknowledged that he had approved Grossfeld's time card. Long said it was a mistake for which he would take full responsibility. Long said he believed that Grossfeld was sick on November 12th and asked if he could check his desk calendar to see what entry he made. Long then departed to check his calendar (Tr. 17509–10, 17588–89, 22769–70, 22085–86). Before Long could return with his desk calendar, Bishop was called into James Gross' office. Bishop admitted that he had approved Hart's time card including the overtime during the pay period. It will be recalled that James Gross stated that Bishop told him that Grossfeld and Hart had gone to Chicago on November 12th; Gross stated that during the meeting with Bishop that Bishop had told him Hart was sick. Bishop was told this was serious and told that it would be taken under advisement and added that he (Bishop) should consider himself on probation (Tr. 18167, 22761, 22770–72, 22086–87). Bishop then departed James Gross' office and Long returned to the office with his desk calendar. Long had a notation for the November 12th date "R.J. at Doc" and he showed the calendar to Gross. Long and Sherck took this page out of the desk calendar and Long was told the matter was serious and he should consider himself on probation (Tr. 17509–11, 17387–88, 22087–90, 22239, 22772–74; GTI Exhibit GL–32).

335. James Gross then telephoned Boonstra immediately after his second meeting with Long and told Boonstra of his meeting with Long, Bishop, Hart and Grossfeld. Boonstra was told that Long and Bishop had already been placed on probation and believed that the actions of Hart and Grossfeld were grounds for discharge. Boonstra agreed that Bishop and Long should be disciplined, but, wanted to know if GTI had ever fired anyone for submitting a false time card. James Gross could not recall any

such previous incident. James Gross and Boonstra then worked out over the telephone, the text of dismissal notices to Hart and Grossfeld and probation notices to Bishop and Long (Bureau Exhibits BL–29, BL–30, BL–31, BL–32). Other than the telephone call to Boonstra and conversations with his secretary, James Gross did no further checking into this matter prior to serving the probation and discharge notices (Tr. 22954–58).

336. The entire question of overtime by employees was a matter of continuous concern to both Harold and James Gross. As noted previously, it was James Gross who had to approve Hart's claimed overtime. Both Harold and James Gross received regular reports on overtime and there were memoranda directing that overtime be reduced and required that overtime be approved in advance (Tr. 17434, 17861–63, 18157, 22506, 22519, 22930–32; Bureau Exhibits BL–26, BL–16, pp. 1–20). In spite of this long-standing concern, news employees did frequently have to work overtime and it was difficult to obtain advance approval for late-breaking stories. The employees answer was to take comp. time in place of the overtime hours worked and this became a common practice (Tr. 16829–32, 16955, 17151–52, 17304–05, 17429–30, 17435–37, 17491, 17551, 18084). This practice avoided employees having to request overtime and permitted the TV assignment editor and chief photographer to direct employees to take comp. time instead of putting in for overtime. The employees would keep track of the accumulated comp. time and the supervisors were generally aware of the amount of accrued overtime (Tr. 16833, 16835–38, 17151–55, 17431, 17451–53, 17491, 17551–52, 18084, 18230).

337. There is testimony that Harold and James Gross testified that they were aware that supervisors would permit employees to take comp. time in exchange for overtime hours worked. However, it was GTI's opinion that comp. time had to be taken within the work-week so as to offset hours worked in excess of eight hours on a given day. This policy was limited to the same work-week so as to conform with applicable federal and state wage/hour laws (Tr. 22934, 22083). Thus, James Gross cited an example where if the employee in a given work-week had worked 40 hours in four days, that employee was told not to come into work on the fifth day (Tr. 22282, 22932–33). But George Blaha said this same work-week policy was not always followed. George Blaha, who instructed Grossfeld how to fill out time cards, did not always follow the same work-week policy and the same was true for other employees. No memo existed setting forth the same work-week policy (Tr. 23082–83, 16829–30, 17431, 17451, 17153, 17497, 17427–28, 23134, 23137). Tom Jones recalled two occasions when Harold Gross had authorized payment to employees who had worked as much as 100 extra hours and could not take comp. time because they were leaving WJIM's employ (Tr. 17863–72). Also, Blaha said he informed Tremper that an employee, Richard Hart, was taking a few days comp.

time around Christmas (Tr. 17863–72, 17438). However, GTI management's position was that it was not aware of any practice on comp. time which was inconsistent with the established "within the same workweek" policy (Tr. 17435, 17455, 17867, 17862, 23083, 22164).

338. On September 12, 1972, Lloyd Tremper had issued a memoranda explaining how to fill out time cards. But comp. time was not mentioned (ACLU Exhibit AL–2(a)). Tom Jones said he did not understand the GTI time card system and considered it "confusing". Bishop also did not understand the Tremper memo and he would send new employees in his department to Dennis Hart for instructions on how to fill out these time cards. But Hart said he really did not understand the time cards either (Tr. 17149–50, 17196, 17858–59, 17427). The Tremper memo was posted so all employees could see it (Tr. 23074). Much of the confusion on the time cards centered on the language used in the Tremper instruction memo for time cards and the fact that there were two pay periods to concern the employee—one for regular hours and another pay period for overtime hours. Because of this confusion, Grossfeld, Blaha and Hart confirmed that employees would, when claiming comp. time, simply show a regular working day for a day when comp. time was taken. Tom Jones assumed that employees entered a normal working day when employees were off on comp. time. It was also Bishop's understanding that an employee could claim comp. time by showing the day as on-duty status and overtime pay for the same week (Tr. 17436-37, 17875–77, 13243–44; ACLU Exhibit AL–20, pp. 23–24). It also appears that mistakes had been made in the past on time cards and the procedure was for Tremper to ask if the employee worked on that day and, if not, to simply correct the card. Occasionally, Tremper would call Bishop to discuss errors on employee time cards (Tr. 17155–56, 17198, 18155, 18267).

339. James Gross was aware of one incident of unusual time card practice. Dennis Lambert had requested an increase in salary and Blaha spoke to James Gross about it and suggested that if Lambert did not get the raise, he might leave. The answer was to authorize Lambert to work some overtime hours each week which Blaha and Lambert testified would be paid whether he worked or not. James Gross thought he was to work the extra hours claimed. In fact, Lambert did not always work the extra hours claimed in overtime (Tr. 17440–42, 18250–52, 23022–23).

340. Grossfeld was angry and shocked at his discharge but when he found out that some of the fellow employees were considering going out on strike over this, both Hart and Grossfeld told them not to take such action (Tr. 17945–47). Bishop asked James Gross why there was a document on his reprimand (Bishop was put on probation before he received the memo). James Gross advised that the probation had no bearing on his opinion of Bishop's work, which he appreciated. Gross said he hated to put Bishop on probation, but it was a serious matter (Tr. 22780). Bishop then

found out about the discharges of Hart and Grossfeld and he went to see James Gross again, but Gross had left for the day. The next day Bishop did see James Gross and said he was angry because Hart was his best photographer and had been fired without his knowledge (Tr. 18169–70, 22782–83). Hart had been complimented for his work at GTI and had previously been criticized only once before in connection with his driving (Tr. 17171–72).

341. Several days later, both Grossfeld and Hart returned to GTI to pick up their final paychecks. They advised Tremper that they were fired before the end of the working day on November 23rd so they could not claim a full day. Tremper told them to enter a normal full working day since he had already prepared checks which included a full day's pay for the 23rd. Grossfeld and Hart were paid for November 12th and for November 23rd (Tr. 16874–76, 17167–69, 22960–61).

342. On November 26, 1973, NABET filed an unfair labor practice charge with the NLRB, accusing GTI of violating Section 8(a)(1) and (3) of the National Labor Relations Act because Grossfeld and Hart appeared to have been discharged for engaging in activities on behalf of NABET (Bureau Exhibit BL–34, p. 5). On January 17, 1974, Boonstra was informed that the NLRB was going to issue a complaint against GTI since it appeared that GTI had violated Section 8(a)(1) and (3) of the Act (Bureau Exhibit BL–37, p. 1). The notice also advised Boonstra that a formal complaint would be issued which would schedule a formal hearing into the matter. The hearing was scheduled for April 16, 1974 (Bureau Exhibit BL–37, GTI Exhibit GL–9). However, prior to hearing, a stipulated settlement was reached (GTI Exhibit GL–17; Tr. 17622–24). GTI, without admitting any violation of the Act, agreed to cease and desist from coercively interrogating its employees, creating the impression of employee surveillance, promising benefits, creating impression that support of the union would be an exercise in futility, soliciting information from employees on union activities of other employees threatening reprisals, issuing written warnings to employees because of activities on behalf of unions, discrimination in work assignment because of union activities and discharging an employee for union activity. GTI also offered Hart and Grossfeld reinstatement and agreed to pay them $2,380 and $1,943, respectively for lost wages (GTL Exhibit GL–17, p. 4; Bureau Exhibit BL–42). On September 25, 1974, the NLRB issued an Order which implemented the stipulated settlement (Bureau Exhibits BL–47, BL–48).

343. Next, the negotiation leading up to the contract between GTI and NABET are examined. On October 26, 1973, NABET notified GTI of its desire to negotiate and that NABET would forward its contract proposals for negotiations (Bureau Exhibit BL–22, p. 1). On November 26, 1973, NABET forwarded its contract proposals to GTI and requested a meeting (GTI Exhibit GL–12, p. 17–42). The first meeting to discuss the

NABET proposal was scheduled for December 19, 1973. Boonstra's secretary called Coyte shortly before the 19th and asked for a postponement because Boonstra was involved in negotiations to avoid a possible strike of the supermarket industry in the Detroit area.[82] Coyte agreed to postpone the meeting to December 27th, although Boonstra said he could only devote several hours to the GTI negotiations (Tr. 17602–03, 18822–24; Bureau Exhibits BL–35, BL–36, BL–41).

344. The meeting did take place on December 27, 1973 at Lansing with Coyte coming from Washington, D.C. for the meeting. Boonstra and Sherck represented GTI and Coyte plus two newsroom employees—Louann Bevins and Herb Washington—represented NABET. The meeting lasted four hours and the union proposal was reviewed (Tr. 17603–06, 17663, 22011, 22018). It was agreed to set aside the economic issues until the non-economic contract language was first resolved and Boonstra agreed to prepare and forward to NABET the GTI counter proposals by January 8, 1974 (Tr. 17605–06, 22023).

345. On January 4, 1974, Boonstra wrote James Gross enclosing the contract proposals and requested that Gross call him Monday or Tuesday (7th or 8th of January) in order that copies, including Gross' suggestions, could be forwarded to Coyte "in accordance with our agreement" (ACLU Exhibit AL–27). The GTI counter proposals were in fact forwarded to Coyte on January 21, 1974 (Tr. 17608). Coyte had written Boonstra and telephoned his office several times after January 10th in an effort to get the GTI counter proposals (Bureau Exhibit BL–38, p. 1; Tr. 17606–08, Bureau Exhibits BL–38, BL–41).

346. The GTI counter proposals did not constitute a full counter proposal but it did deal with such subjects as workday and week, overtime, grievance procedures, arbitration, work stoppage, equal employment.[83] It did not deal with such subjects as termination of employment, day-off and shift changes. In some situations, the GTI proposals were almost the same as the NABET proposals. However, Boonstra represented the counter proposals in his transmittal letter as covering the articles of the agreement which we have discussed and reviewed (compare GTI Exhibit GL–12, pp. 20 and 48; pp. 20–21 and 49; pp. 22 and 51; pp. 41 and 47).

347. The next meeting was proposed for January 31, 1974 but the union was unable to meet (Tr. 17730) so the next scheduled meeting was for February 20, 1974. Coyte had sought an earlier date but Boonstra was scheduled for an operation February 4, 1974, for a hernia and could not be available on February 20th. Boonstra's secretary called Coyte on Febru-

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[82] It is not clear if Bonnstra advised Coyte of the possible supermarket strike, but, Coyte said if he knew that this was the reason for the postponement, he would have agreed to postpone the initial meeting (Tr. 17686).

[83] This listing is not all inclusive, but is representative of the scope of the counter proposals.

ary 11th and advised that he could not be present at the February 20th meeting and a meeting was scheduled for February 27th. However, Coyte had a conflict for the 27th and Coyte insisted the meeting go forward on the 20th and he also requested meetings on March 5, 6 and 7 (Tr. 17608–09 and Bureau Exhibit BL–41). The day after Boonstra's secretary called Coyte, Coyte wrote a letter to Boonstra demanding that the negotiations proceed either through Boonstra or another member of his law firm (Bureau Exhibit BL–41, p. 23).

348. A meeting was held on February 20, 1974 and the GTI counter proposals were discussed. Some agreements were reached on a tentative basis such as the grievance and arbitration procedure (Tr. 17712). Discussion was held on the seniority and some measure of agreement was reached and the overtime provisions were acceptable to the union (Tr. 22029). At the end of this meeting, Coyte requested the meeting resume on March 5th and this was agreed to.

349. The meeting was held on March 5th and Coyte asked Boonstra to write up the results of the negotiations to date and send them to him. Boonstra did send a letter to Coyte on March 6th setting forth the status of the agreements then reached, based on Boonstra's notes (Tr. 17619–20; GTI Exhibit GL–12, p. 75–91; Tr. 22040–41). Coyte continued to be of the view that not enough subjects were discussed at these meetings, Sherck who attended the meeting relates a number of subjects discussed. For example, a comparison of company and union proposals, grievance procedures, work stoppage, seniority was completed, military leave, rest and meal periods discussed and safety and foul weather gear (Tr. 22034; GTI Exhibit GL–12, pp. 75–91).

350. The next meeting was held on March 28, 1974 and at the end of this meeting Coyte said he wanted to meet again on April 16–18. GTI said it would be unable to meet on April 16th because that was the date set for the NLRB hearing on the unfair labor charges brought against GTI by Hart and Grossfeld (Tr. 17621–22).

351. The unfair labor practice charge was settled by stipulation on the morning of April 16th and Coyte asked if the meeting could resume that afternoon. Boonstra rejected this but agreed to meet on April 17 and on April 25 (Tr. 17624–25, 22046, 22049). At the meeting, all the items noted on Exhibit GL–12, pages 76–91 were agreed to. There was a review of the type of work done by each individual and the makeup of a news crew (Tr. 17743). GTI asked the union to prepare another formula for the negotiations of wages and classification (Tr. 17742). Coyte requested a summary of current policies and benefits and this summary was forwarded to Coyte (Tr. 22043; GTI Exhibit GL–12, pp. 97–101).

352. It is noted here that the union had requested negotiating meetings lasting several days because of the inconvenience to Coyte who had to travel from Washington, D.C. to Lansing each time. Also, the union was

not satisfied with a negotiating day that might last only six hours. It believed an eight to ten-hour day was required without a 90-minute lunch break (Tr. 17611, 17615–16, 17668, 22163, 22178, 22182). There were other union complaints about GTI representatives arriving late for a meeting, too much time spent on a review of what happened at the last meeting, Boonstra receiving telephone calls, Boonstra stating that he had to check something with the Grosses prior to an agreement and NABET and GTI employee representatives having trouble getting released to attend the meetings (Tr. 17617–19, 18351, 17731–32). The next meeting was held on April 17, 1974. A union proposal was presented for three basic job classifications and the balance of the meeting was spent discussing benefits. At the end of this meeting, the union presented a revision of its initial job classification proposal (Tr. 17752, 22048; GTI Exhibit GL–30).

353. At the April 25th meeting the company made its first wage proposal. The union rejected this proposal (Tr. 17751).

354. A meeting was held on May 23, 1974 and substantial progress was made on numerous items. The union responded to a proposed company benefit package but the sides remained far apart on the wage increase proposal (Tr. 22055).

355. The next meeting was held on June 6, 1974. There was discussion of 12 to 14 articles of the proposed agreement which had been rewritten as a result of the last meeting and GTI believed an agreement had been reached. Also, discussed were such things as jury duty, sick leave, bereavement, insurance and GTI made a counter proposal on the deadlocked wage issue. The union found this unacceptable (GTI Exhibit GL–12, pp. 102–135; Tr. 17759, 22056–59, 17632).

356. The next meeting of June 20, 1974 was a key meeting. As before a number of subjects were discussed and negotiated. But both the union and GTI were taking hard positions on wages and union security. Coyte insisted the company take a more positive attitude and that NABET was prepared to take any necessary steps to obtain union security and substantial wage increases. The union did, at this meeting, lower its wage increase proposal from $30 per week to $25 per week (Tr. 22211–12). Boonstra told Sherck that Coyte's statement included the possibility of a strike. Another meeting was scheduled for July 11th (Tr. 17632, 22214–15).

357. Subsequent to the June 20th meeting, Sherck and Boonstra agreed there was no point in having another meeting. It was Sherck's view that neither the union nor GTI would give on the wage proposals to a point where negotiations would be worthwhile (Tr. 22064).

358. At Boonstra's request the July 11th meeting was rescheduled for July 23rd and Coyte agreed (Tr. 17777). Coyte called the GTI employees and told them of this and they were upset by the cancellation. On July 14th or 15th, Coyte received an indication that the July 23rd meeting might be cancelled by GTI. Coyte then advised Boonstra that the employees were

not satisfied with the delay in the negotiations and that the company was deliberately delaying and that the employees were prepared to strike. Boonstra replied that if they did not strike on July 23rd he would agree to meet on July 31st and if this meeting went alright, he might agree to meet on August 1st and 2nd. Coyte refused and stated that if the company refused to meet on July 23rd, there would be a strike. This July 23rd meeting was cancelled by the company and the strike commenced on July 23, 1974 (Tr. 17632–35, 17777).[84]

359. The next meeting was scheduled on August 28, 1974 by the state and Federal mediators who had now entered the negotiations (Tr. 17793). This was a two and one-half hour meeting. There was little discussion except to bring the mediators up-to-date and to clarify the positions on the open issues (Tr. 22067–69).

360. During the period between July 23rd (the strike started) and August 28th, some communication between GTI and the union continued. About two weeks after July 23, Coyte wrote to Harold Gross advising that NABET was willing to continue negotiations and requested Gross to arrange a further meeting (Bureauj Exhibit BL–44). Boonstra responded for Harold Gross on August 12, 1974. Boonstra's letter took the position that it was NABET and not the company which broke off negotiations. Boonstra also rejected setting a new date for meetings because NABET had brought the Michigan State Employment Relations Commission into the matter. Thus, if NABET desired a meeting it should ask the State Mediator to set a date and GTI would attend (Bureau Exhibit BL–45).

361. On August 16, 1974, NABET filed a charge with the NLRB which accused GTI of violating Section 8(a)(1) and (5) of the National Labor Relations Act by failing to bargain in good faith (Bureau Exhibit BL–46, pp. 1, 5). Coyte did contact the Federal Mediation and Conciliation Service and they scheduled the meeting for August 28, 1974. The next meeting was scheduled for September 10, 1974 with wide ranging discussion, some agreements were reached but the wage proposals were still a sticking point (GTI Exhibit GL–12, pp. 138–171; Tr. 17796–97, 22073; GTI Exhibit GL–13, pp. 1 and 2).

362. On September 24th, there was another meeting. Again there was discussion on days off, shift changes and work schedules and maintenance of membership language was drafted. This maintenance of membership clause was an important breakthrough as it marked the first time in the negotiations that there appeared to be agreement on whether an employee would have free choice in deciding to join the union.

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[84] When the employees returned to pick up their paycheck for the last period worked, the pay stub contained the notation "the enclosed check is for your services in full thru 7/23/74" (Bureau Exhibit BL–43). Such a notation had never been placed on the pay stub before.

363. Another meeting followed on September 25, 1974 and agreement was reached by both GTI and the union and it was agreed to have the contract type up and the union would sign or ratify it. The final version of the contract was typed and it was formally executed on December 9, 1974 by the parties (Bureau Exhibit BL–50). At the September 25th meeting both GTI and the union agreed to withdraw the charges each had filed against the other with the NLRB (GTI Exhibit GL–14.)

Contour Map Issue

364. The contour map issue was added by the Presiding Judge by Memorandum Opinion and Order (FCC 77M–1443, released August 22, 1977). The issue deals with whether GTI has misrepresented the 0.5 mV/m contour of WJIM-AM in its rate cards or promotional literature distributed to the public or potential advertisers. It appeared that the coverage shown in a WJIM-AM promotional map substantially exceeded the coverage shown in an engineering map filed for the station with the Commission in 1961. The Bureau has the burden of proceeding and the burden of proof is on GTI.

365. In 1961, WJIM-AM changed its program format, and, it was decided that new advertising should be prepared including a new contour map. Carl Onken, WJIM's chief engineer, delivered to Elmer Davis, the station's art director, a copy of the station construction permit application as filed with the Commission in 1961, which application included a map depicting WJIM-AM's predicted 0.5 mV/m contour. Davis[85] used this map to prepare the new promotional map (Bureau Exhibit ZZZ) which depicted the 500 uV/m[86] contour for WJIM-AM.[87] The Davis promotional map differs from the WJIM-AM official coverage map on file with the Commission. The Davis map shows coverage to Jackson and Durand, Michigan, whereas the predicted contour falls short of these cities. (Compare Bureau Exhibit ZZZ with Bureau Exhibit FFFF, Attachment D). Davis was not an engineer and neither Onken nor any other member of the GTI engineering staff was requested by Harold or James Gross to review the Davis map for accuracy (Tr. 24109, 24161).

366. The Davis 1961 promotional map was revised sometime subsequent to March, 1967 to deal exclusively with the coverage for the AM station. The 500 uV/m contour remained almost identical to the 1961 version and the AM 100 uV/m contour was added to replace the previous depiction of the FM contour. The promotion map also includes in the 1967 version the notation "1000 Watts Non-Directional." No reference is made to the WJIM-AM nighttime power reduction to 250 watts (Tr. 24043). Neither

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[85] Davis was deceased before this issue was added (Tr. 24082).

[86] The promotional map also depicted the 50 "UV" contour for WJIM-FM which is not in issue.

[87] The measures 0.5 mV/m and 500 uV/m are equivalent.

Carl Onken nor James Gross were involved in the preparation of the 1967 version of the contour map (Bureau Exhibit AAAA; Tr. 24084, 24123). James Gross was not aware that the second (1967 version) map existed until the beginning of these proceedings and it was shown to him by counsel for GTI (Tr. 24162).

367. It appears that James Wall, a radio time salesman at WJIM from April, 1971 until January 1976, found the second map at the station when he began working there. Similarly, Ronald Voss, employed by GTI as a Radio Sales Manager from April, 1972 to September, 1972, was aware of the second map. Wall and Voss did not use the map in sales presentations because the Pulse figures were outdated (Tr. 24006–07, 23967–68). Voss then decided that since the Pulse figures on the second (1967 version) map were outdated, a new map should be prepared. Voss requested James Gross to approve the preparation of a new map which was similar in style to one he had used at another station. James Gross approved this request (Tr. 23979–80, 24125). Prior to the actual printing of the new contour map, Harold Gross obtained new population and sales figures for the Lansing Metro Area (defined as Ingham, Eaton and Clinton Counties) from the 1971 Yearbook of Standard Rates and Data Services for inclusion in the new promotional piece. But, neither James nor Harold Gross approved the new map prior to its being printed (Tr. 24044–45, 24125–26; GTI Exhibit 000). The new map was printed in August, 1972 (Bureau Exhibits BBBB, KKKK, p. 1; Tr. 23963–64). As printed the map contained the phrase "1000 watts . . . fulltime" on the upper right portion of the map (Bureau Exhibit BBBB). Because of printing errors, the map was rerun and the phrase "full-time" remained at the top right corner of the map and the words "1000 watts" were moved to the bottom center of the promotional brochure (Bureau Exhibit CCCC; Tr. 23972).

368. The coverage contours shown on this new (1972) version differed from the 1969 version. Two contours were shown in red. The contours were not labeled as to what they represented, but, it appeared almost identical with the 500 uV/m and 100 uV/m contours shown on the 1967 map. In addition, the Pulse figures were removed. The map portion of the card is colored grey with the exception of the "tri-county" Lansing Metro Area which is in white (Bureau Exhibits AAAA and CCCC).

369. Some explanation is here required on the facts which the Bureau and ACLU used to conclude that the 1972 map represents an exaggeration of the true contours and the GTI position that such exaggeration does not exist. First, the contours on the 1972 version of the promotional map are not labeled, but since they are almost identical to the 500 uV/m and 100 uV/m contours as labled on the 1967 version, it is assumed that the 1972 contours are in fact the 500 uV/m and 100 uV/m contours. Next, the Bureau prepared, through its engineer, an overlay map for comparison purposes which used the 1961 WJIM-AM coverage map, as filed with the

Commission, but, modified to take into account interference caused by Stations WJEF, WATT and WWBC. The Bureau's engineer found that the WJEF interference to WJIM was less than shown on the 1961 map and interference from WJEF was found to be negligible. Station WATT received authority to increase its power to 1 kW after the WJIM construction pemit was filed, but the Bureau engineer, for purposes of this issue, computed the interference based on the authorized power for WATT before the power increase. Thus, using the Bureau's overlay map which represents an engineering study based upon the 1961 WJIM map plus the interference study of Stations WJEF, WATT and WWBC, the Bureau exhibit shows (Bureau Exhibit FFFF) that the inner circle of the 1972 map (assumed to represent the 500 uV/m contour) overstates the coverage by 1,333 square miles or 36% and its interference-free primary service area by 1,588 square miles or 46%. The Bureau then computes that there are 174,408 people in the overstated area. Moreover the map overstates the number of people within the primary service area by 189,236 or 36% and the number of people receiving primary service by 236,596 or 49% (Bureau Exhibit FFFF).

370. Directing attention to the inner and outer contours as shown on the 1972 promotional map, the outer curve encompasses an area that is 333% of that contained in the inner contour and includes the entire urbanized areas of Ann Arbor, Bay City, Flint, Grand Rapids and Saginaw and the entire cities of Battle Creek, Midland and Saginaw. If you ignore cities with populations of under 35,000, the Bureau Exhibit FFFF shows this extra population amounts to 1,246,471 (1970 U.S. Census). As previously indicated, the 1972 map contains the notation 1000 watts (Bureau Exhibit CCCC). In fact, WJIM-AM operates with a power of 250 watts at night. This 250 watt nighttime power would produce a nighttime primary service contour of 4.1 miles and an area of 52.8 square miles. If you assume that the inner curve on the 1972 map represents day and nighttime coverage the actual nighttime coverage is overstated on the 1972 map by 9,436% and the outer curve, on the same assumption represents an overstatement of 31,455% of the nighttime primary service area (Bureau Exhibit FFFF, p. 5; Bureau Exhibit GGGG, pp. 1–2).

371. GTI argues that the entire premise of the Bureau's exhibits which demonstrate the alleged overstatements of the 1972 map must be viewed in the context of the entire promotional piece. Thus, GTI explains that the population figures shown on the 1972 promotional piece are restricted to the 3-County Lansing Metro Area which are all within the primary service area. (Compare Bureau Exhibits AAAA and CCCC)

372. It is Harold Gross' testimony that he had nothing to do with the drafting of the contour lines on the 1972 map and he told no one to exaggerate the size of these contours (Tr. 24045–46). Onken, GTI chief engineer, was not involved in the preparation of the 1972 map and James

Gross was not involved beyond giving Voss the original approval. (Tr. 24045–46, 24123–25, 24162–63).

373. It is the opinion of Harold Gross that advertisers buy advertising time based on population figures and not contour lines (Tr. 24045). The 1961 map did not include population figures, however, subsequent maps did with the 1972 map restricting the population figures to the three-county metro area. An inspection of the promotonal pieces does show that the contour lines were a prominent part of each of the advertising brochures (see Bureau Exhibits ZZZ, AAAA, CCCC, DDDD and EEEE). The record shows that on two occasions a potential advertiser and an advertising agency requested and were sent copies of WJIM's contour maps (Bureau Exhibits HHHH, pp. 2–3, 7–8).

374. James Gross testified that he did not use contour maps in any of his sales presentations (Tr. 24137). GTI, however, responded to an interrogatory relative to the persons engaged in the distribution of the contour map that James and Harold Gross were among those who distributed "sales literature." James Gross was asked to explain the difference in his testimony at the hearing and the answer to the interrogatory. James Gross indicated that he responded to the interrogatory that he distributed "sales literature" and this "could include a number of things, sales literature, contour maps, rate cards, anything, any informational material regarding the station" (Tr. 24137, 24172–73).

375. GTI offered as an expert witness, the testimony of Bernard Pearse, WJIM's national representative in Detroit. Pearse sells advertising time on WJIM to advertising agencies. He rarely deals with the advertisers themselves. Pearse does use surveys and rate cards in performing his sales function and he has not used contour maps for years (Tr. 24181–82, 24184, 24190–91). Pearse did not represent WJIM from 1966–1975 when the station was represented by EAstman and he did not know how Eastman had dealt with the WJIM account (Tr. 24195–96). Also, Pearse did not handle any local sales from WJIM and was not familiar with the sales methods of the WJIM local salesmen (Tr. 24199). During the 1975 composite week there were 85 advertisers on WJIM radio of which 61 or aproximately 72% were local advertisers (GTI Exhibit MMM, p. 3).

376. Ronald Voss, the GTI radio sales manager, said he used the coverage map to show potential advertisers the station's primary coverage area. In this respect he believed it important to show a potential advertiser that the station does cover the town or the primary sales market the advertiser needs to reach (Tr. 23974–75). An agency may want similar information, if, for example it represented a group of dealers or stores and needed to know if the signal reached those areas (Tr. 23976). James Wall, a salesman at WJIM from April, 1971 to January, 1976 (Tr. 24006), used the 1972 version of the coverage map. It was his procedure

when dealing with either a local advertiser or an agency to always include a coverage map with the folder he prepared to be mailed out to potential advertisers or when he was calling on a potential advertiser (Tr. 24009).

377. Alden Shipley succeeded Voss as Radio Sales Manager and was employed at GTI from January, 1973 to March, 1974 (Tr. 23983–84). When Shipley arrived he found a supply of the old 1961 sales brochure map and he used it because it was the only map which also contained the contour for the FM station (Tr. 13985–86). Shipley then deicded that a station profile should be added to the 1972 version of the map and he wanted a separate contour map prepared for the FM station. Shipley spoke to James Gross in February, 1973 about this and Gross agreed with Shipley's suggestion. Shipley then obtained assistance from Tom Jones in preparing the AM and FM station profiles and the profiles were then verified as to the information in the profile, with Brian Halter (Program Director for both the AM and FM stations) and Shipley also spoke with Elmer Davis, the Art Director, about the layout for the contour maps (Tr. 23986–90). Five hundred copies of the new advertising brochure were printed in March, 1973. It consisted of the 1972 version of the map with the newly prepared station profile on the reverse side (Bureau Exhibits CCCC and KKKK, p. 3; Tr. 23964). Shipley used the new (1973) coverage map as a part of packets he prepared which were either mailed to or left with advertisers and these packets were also sent to advertising agencies (Tr. 23999–24002). During the period that Shipley was using the 1972 contour map which had the two unlabeled contours, he believed the outer circle was the daytime contour of WJIM-AM and the inner circle was the nighttime contour. When James Wall was asked what the red contour lines represented on the map, he told advertisers that the outer circle was daytime coverage and the inner circle nighttime coverage. Only, if asked, would Wall advise advertisers that the station reduced its power at night (Tr. 2409–10).

378. Wall was also of the belief that WJIM-AM was received at Jackson, Michigan and he went there to sell advertising with the representation that the station did cover Jackson. This belief was based on the fact that the station was "getting response" from Jackson and the fact that the AM station gave Jackson temperatures twice an hour (Tr. 24010, 24031). All of the labeled coverage maps used by WJIM-AM during 1961–1977 reflected coverage to Jackson and the 1972 map showed Jackson inside the inner contour (See Bureau Exhibits ZZZ, AAAA, CCCC, DDDD, EEEE, Attachment B).

379. It is Harold Gross' testimony that he could hear WJIM-AM on daytime trips to the Detroit airport which is located near Ypsilanti (Tr. 24049–50). However, he admitted that when driving back from the Detroit airport at night, he could not pick up the station as quickly (Tr. 24056). Reference to the 1972 map would place the Detroit airport approximately

midway between the inner and outer contours (Bureau Exhibit CCCC). Harold Gross acknowledges that he never WJIM-AM's signal in Detroit (Tr. 24062). The outer contour of the 1972 map indicates coverage to at least part of the city of Detroit (Bureau Exhibit CCCC; Tr. 24159). Harold Gross would often drive north of Lansing and said he would listen to WJIM-AM in Alma and on into Mt. Pleasant (Tr. 24050). Gross could not recall any specific times he had heard the station in Mt. Pleasant although he knew he would be driving in this area mostly in the afternoon. He did know that as he traveled north of Mt. Pleasant, he started getting interference from a station in Cadillac, Michigan (Tr. 24056–57). Mt. Pleasant is approximately midway between the inner and outer contours of the 1972 map (Bureau Exhibit CCCC). Gross also stated that he drove towards Grand Rapids in the afternoon he heard the station in the area of Lowell (Tr. 24057). Lowell is just outside the inner contour of the 1972 map, but a significant distance from the outer contour (Bureau Exhibit CCCC).

380. Shipley did not discover that the two unlabeled contour lines on the 1972 map were not the daytime and nighttime coverages until the fall of 1973, seven months after he started using this map. Diane Kennedy, a member of the sales staff, informed Shipley that one of her clients said he could not receive the signal in Holt, a city well within what Shipley believed to be the nighttime coverage area. Shipley then had Onken explain to him what the contour lines represented. Shipley then told his sales staff to stop referring to the contours as daytime and nighttime. The sales staff did stop the reference to daytime and nighttime but, the 1972 map continued to be used (Tr. 23992–94, 23997).

381. Shipley states that after the Diane Kennedy incident, he asked Onken to have a new coverage map printed which would accurately state what the contour lines represent (Tr. 23995). Shipley testified that Onken told him that the contour map was wrong and he (Onken) had been telling the company this for years that the map failed to depict the 50 mV/m and the 100 mV/m contours and there was no reference to the nighttime power of 250 watts (Tr. 23995). Onken, however, testified he had no specific recall of discussions with Shipley concerning sales brochures. Further, Onken stated that he would have made no such statement to management as described by Shipley. Mr. Onken stated his experience in dealing with management was precisely the contrary (Tr. 24100–05, 24098–99). The testimony of Harold and James Gross is consistent with that of Mr. Onken (Tr. 24135, 24063).

382. Sometime late in 1973, James Gross was contacted by the American Map Company who notified Gross that GTI was using its maps in GTI advertising brochures without paying for their use and without including the company's copyright on the maps. The American Map Company became aware of this when a WJIM-TV representative in New York

began distributing TV coverage maps (Tr. 24128). Subsequent to James Gross' conversation with the map company, Shipley had a map printed by an instant printer. Gross had all copies of this map thrown out before they were unwrapped, except one of the packages had been opened and he noticed the phrase "one thousand watts" was on the map. Gross did not believe any of these maps were distributed and all were thrown out within 24–48 hours after they were returned from the printer (Tr. 24128).

383. Next in December, 1973 Shipley had a new contour map prepared which replaced the 1972 map. Shipley requested that the map note that the station was 1000 watts day and 250 watts night and James Gross agreed with this addition. Brian Halter added the phrase "non-directional" at the top and the rest of the map was prepared by Elmer Davis (Tr. 23996, 24128–29). The 1973 map had only one contour line which was labled "Daytime—500 uV/m" and the coverage area was depicted on a larger scale. The single contour line on the 1973 map still closely tracked the contour found on the 1972 map (Bureau Exhibits CCCC, DDDD and FFFF, p. 4).

384. It will be recalled that Harold Gross believed advertisers were more interested in population and sales figures than contours. The 1973 map included this information which was the same as the 1972 sales brochure information although Harold Gross knew the community had grown (Tr. 24064–65). One thousand of the 1973 sales brochures were printed (Tr. 23964).

385. Shipley states that he asked Onken to verify the accuracy of the new map before it was sent to the printers and Onken said it was fine (Tr. 23996–97). Shipley also asked James Gross for his approval of the new map and James Gross told Shipley to make sure the copyright notice was included (Tr. 23997). Other than clarifying the nighttime power (250 watts) and the copyright notice, James Gross did not ask anyone else to check the accuracy of the map (Tr. 24126).

386. After the 1973 map was printed, Wall continued to use the map as before, i.e., he placed it in a folder of various promotional materials presented to advertisers and potential advertisers, both local and national (Tr. 24011).

387. On February 19, 1975, the law firm of Arent, Fox, Kintner, Plotkin and Kahn sent an all-clients memo to its radio and television station clients, including WJIM on the subject of contour maps (Tr. 23941, 24035, Bureau Exhibit IIII). This memo noted Commission concern about promotional materials, including contour maps, which could mislead advertisers and the public. The memo noted several short-term renewals because of such deception and the Review Board had recently disqualified an applicant in a comparative FM proceeding because its promotional material stated "5000 watts, 920 on the dial. Day and Night" and made no mention of the fact that the nighttime power was reduced to 1000 watts

(Bureau Exhibit IIII, p. 1). The memo concluded with urging clients to review all their promotional material and insure that they were neither deceptive or misleading (Bureau Exhibit IIII). Two months later James Gross asked Onken to review the GTI AM, FM and TV maps for accuracy. Onken completed such review in a few days and at Gross' request wrote Gross a memo on April 25, 1975 stating he found the maps correct (Bureau Exhibit JJJJ; Tr. 124110). Onken did find a problem with the language in the profile section on the reverse side of the map in that such profile implied the AM station operated at a power of 1,000 watts, 24 hours a day. He recommended that the maps be destroyed and a new profile prepared which would state that the power was 1,000 watts day and 250 watts night. James Gross accepted Onken's recommendation and ordered new contour maps in May, 1975 incorporating Onken's recommended change (Bureau Exhibits EEEE, KKKK, p. 5; Tr. 23964–65). The new May, 1975 version of the contour map did not change the contour line and the information concerning population and sales remained unchanged (compare Bureau Exhibit DDDD with Bureau Exhibit EEEE). Onken made the inspection of the maps, as requested by Gross, to note any "glaring" errors and the only information Onken provided James Gross was that stated in his memo of April 15, 1975 (Bureau Exhibit JJJJ; Tr. 24111).

388. The May, 1975 version of the contour map continued in use at GTI until it became known that the Bureau was considering filing a motion to inquire into this matter. James Gross instructed staff members not to distribute any more copies of the map and retrieved copies in the radio sales office and from the sales staff. Since this time, no coverage maps have been used by WJIM (Tr. 24130–31).

Conclusions

1. This proceeding concerns the GI applications to renew the licenses for Stations WJIM-FM and WJIM(AM) at Lansing, Michigan. The resolution of the issues designated against GTI as discussed infra will determine if GTI is entitled to a renewal of the licenses for its licensed facilities.

News Practices (Issues (a)—(d))

2. Before considering the news practices issues, a distinction must be drawn between a course of deliberate news falsification, distortion or suppression by a licensee as to which events this agency has a valid interest and the exercise of news judgment by a licensee as to which the Commission has no interest. With the determination that the news item in question resulted from a valid news judgment, even though such judgment may appear questionable or wrong, the Commission's inquiry is at an end. The case law makes clear that news judgment is not a valid area of inquiry. See, for example, *National Citizen's Committee for Broadcast-*

ing, 32 FCC 2d 824 (1971) where the Commission expressed its opinion on the matter:

> "Evaluation of news 'pressures', from whatever source, is for the journalistic judgment of the licensee. The Commission does not interfere with that journalistic judgment. To do so would contravene the First Amendment . . . We thus will not hold evidentiary hearings here to determine, perhaps largely on credibility grounds, exactly what a public official said to a broadcast journalist and whether the latter 'distorted' the news. This is a quagmire where Government intervention is far worse than any abuse involved." 32 FCC 2d at 825.

For similar representative holdings, see *Network Coverage of the Democratic National Convention*, 16 FCC 2d 650 (1969); *Columbia Broadcasting System (Hunger in America)*, 20 FCC 2d 143 (1969); *The Selling of the Pentagon*, 30 FCC 2d 150 (1971) and *Radio Station WSMT, Inc.*, 27 FCC 2d 993 (1971).

3. However, once it has been determined that there is a basis to inquire into the question of news falsification, distortion or slanting, the Commission's right to such inquiry is also clear and such inquiry is not then shielded from government scrutiny by the First Amendment to the United States Constitution or Section 326 of the Communications Act. See *Hunger in America, supra; Star Stations of Indiana, Inc.*, 51 FCC 2d 95 (1975) and *WPIX, Inc.*, 68 FCC 2d 381 (1978).

Blackouts of Lansing City Councilmen

4. Mr. Applegate is a key witness on the alleged order by Harold Gross to blackout news coverage of Lansing City Councilmen, Moore, May, Adado and Ferguson. The alleged initial blackout order was given in the fall of 1967 or the early part of 1968 and repeated from time to time until late 1969 or early 1970. Applegate was a GTI news reporter who covered City Council and he assisted Harold Gross in his efforts to obtain a CATV franchise from the City Council. Applegate cannot be specific as to Harold Gross' "enemies" on City Council, that is to say the ones who appeared to be against any CATV franchise application filed by Harold Gross. Applegate could only identify one of the "enemies" mentioned by Gross which was Councilman Moore and Applegate had only a recollection that the others identified as "enemies" by Harold Gross were Ferguson, May and Adado. Applegate said Harold Gross repeated his order to blackout his "enemies" on City Council, but, a more positive identification was not available.

5. Harold Gross denies any such instruction to Applegate and the matter becomes a question of the weight to be afforded to each of the witnesses based on all the other testimonial and circumstantial evidence. In addition to the time element, which is a factor in the testimony of all witnesses, consideration must be given to the fact that Harold Gross is an

interested party and risks the possible loss of valuable licenses. Mr. Applegate, however, is found to be a witness who would exaggerate his importance with respect to his personal relationship to Harold Gross. GTI would seek to find that Applegate had no special relationship to Harold Gross on CATV matters and that he was a news reporter and nothing more. The record does show, however, that Applegate did work with Harold Gross on CATV matters and Applegate did exaggerate his role in this respect.

6. The record shows support for Harold Gross' "enemies" list order to Applegate in the testimony of Robert McCall who was television news director at the time of the alleged Harold Gross "enemies" blackout list. McCall's support of Applegate is based upon an approximate 30-second conversation with Applegate in the hall leading to Harold Gross' office. According to McCall, Applegate stated "that Mr. Gross had told him to tell me that four of the members of City Council were not to be covered any longer on the news because they had opposed Mr. Gross on the CATV matter." McCall then went into Harold Gross' office and Gross asked McCall if he understood Applegate's instructions. But Mr. McCall was never told the names of any Council members allegedly excluded from news coverage. Further, McCall did not recall his testimony as to what Harold Gross told him after meeting with Applegate until an eleventh-hour reversal of his prior testimony. McCall had previously denied any discussion with Harold Gross but first remembered the conversation with Harold Gross about eight years after it took place, one month before he was scheduled to testify in this proceeding. McCall's testimony cannot be credited insofar as it attempts to trace back to Harold Gross, an order Applegate claims he received from Harold Gross.

7. Next, the testimony of Applegate is supported by other GTI employees, Carr, Kowal and Davidson, who recall that Applegate instructed them not to film certain City Councilmen. Marvin Boone, radio news director and Michael Wright, acting TV news director, also participated in discussions concerning the exclusion of members of the Lansing City Council. But, Carr, Kowal and Davidson did not know if Applegate mentioned the names of the Councilmen on the "enemies" list. No witnesses could establish any actual names on the alleged Harold Gross "enemies" list except by innuendo or rumors. Accordingly, it is concluded that the testimony of the fellow employees of Applegate does not lend any additional support to Applegate's testimony.

8. One presumption that can be said to exist here is that Harold Gross was well aware of the content of GTI news programs on a daily basis and he certainly made his views known as to the type of newscast he desired to present over GTI facilities. But Applegate testified that he (Applegate) never had any policy to suppress the news and no one else had a policy to suppress news coverage of any members of the City Council. In short,

Applegate appears to be suggesting that even if Gross had issued his "enemies" order to him, such order was not carried out. If, as represented by Applegate, he afforded coverage to Councilmen on the "enemies" list, the nature and disposition of Harold Gross was such that the news department would have been advised immediately of this and told, in no uncertain terms, to obey his prior order. Yet, there is no evidence of this in the record.

9. This area of testimony presents additional problems in accepting the Applegate version of these events. Applegate's testimony demonstrated that he was a young reporter who identified himself as Harold Gross' right-hand man. He used his connection with Harold Gross on CATV matters to convince his fellow employees that he was speaking for Harold Gross and that even Applegate's supervisors in the news department had no control over him. Applegate also gave this impression to others not employed by GTI. It must be concluded in this area that Applegate actually did believe his association with Harold Gross would open up a top executive position for him at GTI. This being the case, Applegate's testimony that he provided coverage to the city Council based on his news judgment and disobeyed the alleged order he received from Harold Gross to black out his enemies cannot be credited. Applegate must be charged with the knowledge that in disobeying orders of Harold Gross, he could dismiss any thoughts of being an executive at GTI and that his remaining days at GTI were most likely very short. It is true that there was considerable discussion in the GTI newsroom about an enemies list, but Applegate appears to be its originator and it cannot be traced back to Harold Gross.

10. Councilman Harold Moore said GTI was excluding coverage of four Councilmen. Moore had just been the subject of a GTI editorial in which GTI accused Moore of a conflict of interest insofar as he continued to hold his City Council seat while holding employment with a competing CATV company. Moore's demeanor at the hearing clearly indicated that he had an ax to grind with Harold Gross and GTI. Further, while Councilman Moore's CATV interests are not in issue here, it can be concluded that such interests would be opposed to any grant of a CATV franchise to GTI.

11. In rebuttal to this testimony of Moore, GTI presented the testimony of every other member of the City Council and the Mayor and City Attorney at the time in question. It was generally believed at this time, that the four Councilmen on the Applegate version of the "enemies" list were Moore, Ferguson, May and Adado. Every other Council member and the Mayor and City Attorney testified that he or she did not believe Mr. Moore in his complaints about GTI and also observed that both Moore's coverage and their own had been fair and objective over the years, including the time periods of the CATV activity.

12. One additional factor needs to be considered in the alleged Harold Gross directive to Applegate to exclude his "enemies" on City Council. This is the editorial carried by GTI on the Moore conflict of interest. This presents the question of whether Harold Gross prepared this editorial not with a view to alerting the public to some important public issue, but, rather to retaliate against Moore for his vote against GTI. Related to this is the entire question of Moore's claim in the speech before the City Council that GTI would not provide him coverage because he was one of the "enemies" of GTI. It cannot be concluded that GTI did in any way fail to cover Moore or any other member of City Council. While it may be found that both the Moore speech and the GTI editorial were intemperate in terms, this does not permit a conclusion that the editorial was just another part of a GTI order to blackout Moore and three other members of City Council. Based on the record, it is concluded that GTI did not issue blackout orders against its "enemies" on City Council, and GTI is found to have successfully rebutted such charges.

The Bowerman-Williams News Blackout

13. Mr. Potter was the source of the information contained in the Bill of Particulars relative to the blackout of news coverage on Mr. Willard J. Bowerman and Governor G. Mennen Williams. Porter was director of news and public affairs of WJIM radio and TV from the fall of 1958 to 1961. Potter was shown to have made false statements in connection with his political campaign and such statemens were repeated in this record to a point where it was ruled his testimony should be disregarded. Therefore, this charge is rejected and resolved favorably to GTI.

The Hoffa-Scholle News Coverage

14. Mr. Evans is the Bill of Particulars source for the claim that GTI blacked out news coverage of Messrs. Hoffa and Scholle. Mr. Scholle was a Detroit labor leader and Mr. Hoffa had his office in Washington, D.C. and was a national figure. As best as the record permits a finding in this area, it appears that Messrs. Scholle and Hoffa were appearing in Lansing and maybe the network had requested WJIM–TV to cover this for the network.[88] Every other GTI newsman, at this time, with varying degrees of recall, testified that the two labor leaders were covered on GTI and they were not aware of any Harold Gross policy against the two labor leaders. Accordingly, it is concluded that Evans' charges are not accepted and the charge that Harold Gross ordered the suppression of coverage of Hoffa and Scholle is rejected.

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[88] Neither NBC nor CBS could confirm such a request to WJIM–TV.

The Harrison-Chamberlain Press Releases

15. James A. Harrison was the Democratic Candidate in 1968 for U.S. Representative for the Sixth Congressional District of Michigan. During the time of the primary campaign (June 14-August 5) he issued eight press releases and during the general election campaign, there were 15 press releases issued by Harrison. Harrison charges that WJIM or WJIM–TV gave some coverage to his press releases during the primary campaign, but, no coverage was afforded during the general election campaign, i.e., August–November, 1968. This entire question presented by the alleged non-coverage of the Harrison campaign presents evidentiary problems. First, Mr. Harrison believed that Mr. Such, who was a GTI news employee and who regularly covered the campaign, was a reporter for another station. Next, Mr. Harrison bases his lack of coverage on his personal monitoring efforts of watching and listening to as many TV and radio newscasters as he could. On TV, this monitoring would consist of flipping back and forth between the nightly TV newscasts and radio would be similar, i.e., he would tune from station to station. Such monitoring efforts are insufficient, standing alone, to establish whether GTI covered or did not cover the Harrison press releases. Further, while this evidence is also fragmentary, GTI newspeople at the time did recall coverage of the Harrison campaign. There is also evidence that GTI featured Harrison on its "1240" radio program. Perhaps the strongest evidence in support of Harrison's belief of lack of coverage is the testimony of Paul Kowal, a TV news cameraman for GTI. He recalled Harold Gross stating that some of the news conferences called by Harrison did not warrant coverage as news. However, Kowal was not sure whether Harold Gross said he wanted less coverage or no coverage. It is concluded that there is no basis for a finding that any lack of coverage of the Harrison campaigns was part of any plan to exclude him.

Coverage of State Capitol and City Hall

16. Harold Gross had a running disagreement with the TV news staff on the proper mix of so-called hard and soft news stories. The matter never seemed to be resolved - at least to Harold Gross' satisfaction. Harold Gross was also concerned about too many news stories where the news reporter would interview a politician at the State Capitol or City Hall. Gross wanted to delete interviews with so-called "talking heads" and expected the news staff to use the talking head story as just background for a story dealing with the location and actual people involved in the story related by the politician. The so-called soft stories which Harold Gross requested were those which stressed human interest matters. During the period under consideration, 1970–1972, Gross took a continuing interest in the GTI news content and efforts to achieve the so-called hard-soft news mix desired by Gross.

17. A starting point in the consideration of this issue is a January 9, 1970 Harold Gross memo to Brad Bate, TV news director, which complains about the WJIM–TV drop in ratings. Gross said he wanted to put some glamor and creativity into the news and "get rid of Graves, Ryan and Waldron and start covering important events in Flint and Jackson". There followed an examination of many facts in which an attempt was made to show that GTI or Harold Gross did, in effect, issue an order not to cover these individuals, and, insofar as legitimate news was coming from these sources, such news was suppressed.

18. Bate received another memo from Harold Gross ordering him to cease coverage of the City Hall and State Capitol and again Harold Gross pressed his view that he wanted less political coverage and more feature stories. Bate testified that he did not regard the Gross memos as directives not to cover certain individuals, and, in fact, Bate said he continued to afford coverage based on his news judgment. Bate recognized the Gross memos as part of the Harold Gross policy of being more selective in covering political figures. The testimony of Harold Gross is also credited in this area. The record leaves little dobt that Harold Gross was urging that more feature or human interest stories be carried and that talking head stories on politicians not be carried. Bate's testimony is also credited here. It appears that Bate accepted the Harold Gross orders as meaning that he wanted less dominance of political coverage and more feature stories. Based upon this interpretation, Bate continued to cover the news based upon his news judgment and Bate received no complaint from Harold Gross for not following through on his specific reference. On the basis of the findings, it is concluded that the Harold Gross memos to Bate did not constitute orders to exclude coverage of certain persons and events and the orders to Bate did not result in the suppression of news.

19. Andrew Such, the acting assignment editor, also received a memo on March 5, 1970 from Harold Gross. Harold Gross noted that the monthly film budget was increased. However, Gross made it clear that the additional film was to be used for creative news and not "the Graves, Ryan and Waldron political coverage". A follow-up memo was issued by Harold Gross stating that the additional film was not being used for the intended purpose, i.e., creative news. Mr. Such, like Mr. Bate, did not consider these Gross memos to be directed at Graves, Ryan and Waldron. Rather, it was Harold Gross' in-house phrase which he used to convey the Gross philosophy of the news which was to have in general less political coverage. The memos to Andrew Such do not constitute an order by Harold Gross or GTI to suppress news coverage.

20. Howard Lancour was the TV news director in May, 1971 and he received a Gross memo critical of a story about William Ryan, Speaker of the Michigan House of Representatives. Harold Gross wanted emphasis on feature and less on political news. Mr. Lancour had received other

similar memos from Harold Gross and Lancour recognized this as the Harold Gross view that he did not think Lancour's political news stories all that newsworthy. Gross again was urging that the WJIM–TV news include more human interest stories. It is again concluded that the Lancour memo and oral statements concerning political coverage were not motivated by partisan or political interests.

21. Finally, the record shows that Robert Billman and Clifford Lawrence received memos from Harold Gross similar to those received by Bate, Such and Lancour. Again it can be concluded that Harold Gross was again attempting to reduce political coverage in general and it was not an order to exclude any person or event.

22. In considering this entire area of alleged suppression of news by GTI, the allegations against GTI were only by innuendos or inferences by witnesses that were less than reliable, for example, Applegate, Potter and Moore. This was rebutted by key representatives of those areas of government alleged to have been the subject of news suppression and some 30 news employees all gave the testimony in support of GTI.

The Private Interest Issue

23. Commission case law does not provide clear guidelines relative to the airing of news stories or the non-airing of such stories which may directly relate to the owner of the broadcast facility or indirectly relate to its advertisers. Commission rulings have related to such areas as the selection of musical programming, the airing of promotional announcements publicizing off-the-air activities and other matters not involving journalistic news and public affairs programming judgments. *Crowell-Collier Broadcasting Corp.*, 14 FCC 2d 358 (1966); *WFLI, Inc.*, 13 FCC 2d 846 (1968); *Waterman Broadcasting Corp. of Texas*, 28 FCC 2d 348 (1971); *Fuqua Communications, Inc.*, 30 FCC 2d 94 (1971); *Radio WCMQ, Inc.*, 62 FCC 2d 487 (1976); *Unfair Trade Practices (Sarkes Tarzian, Inc.)*, 23 FCC 2d 221 (1970); *Sports Broadcasting*, 48 FCC 2d 235 (1974) and *Screen Gems Stations, Inc.*, 46 FCC 2d 252 (1974).

24. When questions of "private interest" have arisen in matters of journalistic news and public affairs programming, the Commission has adopted the requirement of compelling extrinsic evidence to warrant its intrusion into such matters. *Citizens Communications Center*, 25 FCC 2d 705 (1970); *Fairness Doctrine Ruling (William H. Harsha)*, 31 FCC 2d 847 (1971); *Fairness Doctrine Ruling (Mark Lane)*, 37 FCC 2d 630 (1972); *Public Communications, Inc. (PCI), 49 FCC 2d 83 (1974); Columbia Broadcasting System (Mobile Homes), supra; Chronicle Broadcasting Co., supra; Miami Valley Broadcasting Corp.*, 56 FCC 2d 399 (1975); Michael D. Bramble, supra and *Tri-State Broadcasting Co., Inc.*, 59 FCC 2d 1240 (1976). Another line of cases should be mentioned are those cases which deal with the question of a station editorial or news item which

touch on the private interest of a licensee. This issue is not involved but it has been held that the licensee must disclose the private interest. See *Gross Telecasting, Inc.*, 14 FCC 2d 239 (1968) and *National Broadcasting Company (Chet Huntley)*, 14 FCC 2d 713 (1968).

25. The single item in the Bill of Particulars under this issue is the Lansing Tennis Club (LTC) matter and concerns memoranda from Mr. Harold Gross in December, 1972 and April, 1973 relative to the coverage of the LTC which had not paid its advertising bill. It is the GTI position that Harold Gross was simply seeking to discourage free publicity for an organization that had not paid its advertising bill. The Bureau and ACLU urge that this represents a news blackout on the LTC until its advertising bill is paid. The findings show that GTI afforded coverage to the LTC on the sports news and Martha Dixon Show on five occasions during 1971 and 1972 ending with a sports news story on December 26, 1972 which covered the opening day of the Western Closed Indoor Tennis Championship. After this December 26, 1972 coverage, all further coverage ceased until July, 1973. The fact of non-coverage does not establish that it was part of a GTI policy to exclude coverage of the LTC. However, the record next shows that the LTC, as of December 27, 1972, owed GTI $1,731.50 for advertising over the facilities of GTI. Further, the record shows that Harold Gross sent a memo to Mr. Staudt, WJIM's sports director, advising that the LTC owed GTI $1,500 and that "I do not want to give them any publicity on the club or any of their activities". It is Staudt's testimony that he understood the Gross memo to mean that Harold Gross was seeking some assistance in collecting the LTC advertising account, but that he was to continue to afford the LTC news coverage in the normal course, i.e., if something appeared newsworthy in his judgement, it should be covered. Staudt found nothing newsworthy after December 26, 1972 until July, 1973. GTI also urges as a defense in this and other instances where Harold Gross memos to his staff are considered, that the literal language contained cryptic and private communications between parties having a close relationship and are susceptible to misinterpretation by outsiders. Thus, the interpretation of the parties should be accorded great weight. While Harold Gross and Staudt no doubt had a close working relationship, the memo from Gross to Staudt was a "first" in that Staudt had never had such a request from Harold Gross before this.[89]

26. At this point the record shows in substantial detail, just how Staudt exercises his news judgment in deciding what stories should be aired. It is Staudt's position that December 26, 1972 was a very slow sports day and he had selected the LTC story because there were some local Lansing

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[89] It is here noted that the cryptic language in the Harold Gross get rid of Graves, Ryan and Waldron memos was found to deal with politicians in general and not these three particular politicians. A similar conclusion cannot be made on the Staudt memos.

area kids in it. According to Staudt, their chances of surviving the first day were remote so the story was dropped after the first day in favor of another story which was planned at least a day in advance. It actually developed that the local talent did survive the first day which would cast some doubt on the reason for dropping the story. It should be noted here that whether Mr. Staudt was right or wrong in his estimate that the local kids would be eliminated on the first day, the entire matter would fall in the area of valid news judgment with no further examination of the issue except for the Harold Gross memos. But there is the Harold Gross memo which in clear language tells Staudt to stop coverage until an advertising bill is paid. The meaning of the Harold Gross memo of December 27, 1972 is reinforced by the second memo to Staudt on the subject on April 23, 1973. Here Harold Gross, still unsuccessful in collecting the outstanding advertising bill from LTC, advises Staudt that "I want absolutely no coverage or news about their club [LTC] until I give you a further okay". Even affording the greatest latitude for the use of in-house language not intended to be made public, there can be little doubt that Harold Gross will permit absolutely no coverage of the LTC until its advertising bill is paid. Against, Staudt testifies that this did not influence his news judgment. However, prior to Staudt's decision to cover the Western Outdoor Closed Tournament to be held at the LTC in July, 1973, he requested permission from James Gross to carry this event. James Gross granted such permission. It appears that while Staudt did not know the actual outstanding balance on the LTC account on the day he sought permission from James Gross to cover the LTC event, the LTC debt was paid by the time the actual coverage of the event was broadcast. On the basis of all facts relative to this incident, it is concluded that the Harold Gross memo did constitute an order to Staudt to cease coverage of the LTC and that such order was designed to serve the licensee's private interest rather than the public interest. The Communications Act imposes the general duty upon broadcast licensees to operate their stations in the public interest. As a public trustee, the broadcaster must scrupulously avoid intentional and deliberate falsification, distortion or slanting of the news. See *Hunger in America,* 20 FCC 2d 143, 151 (1969); *Star Stations of Indiana, Inc.*, 51 FCC 2d 95 (1975) and *WPIX, Inc.*, 68 FCC 2d 381 (1978). The Commission has held that where issues are involved of possible distortion, falsification or misrepresentation of news does not involve protected judgments about the news content. Such government scrutiny is not otherwise shielded by the First Amendment to the Constitution or Section 326 of the Communications Act. Harold Gross' order to Staudt was not dictated by any valid exercise of news judgment. It was simply an illegal device to aid in the collection of an overdue bill of an advertiser and this cannot be condoned. While this single incident of suppression of the news may not be the basis, in and of itself, to deny the renewal of licenses, it is a disqualifying issue of decisional significance and must be considered with the other issues in this proceeding in the ultimate determination of whether GTI should be permitted to renew its licenses.

27. Related to the question of the selection of programming by GTI to promote its private interests was an examination on this record of approximately 50 other items in an effort to determine if GTI activities in this regard were part of an established pattern of doing business. The conclusion to be made on this entire examination is that the proofs either show no relationship to the private interests of GTI or they are found to be *de minimis* insofar as any finding that GTI, in addition to the Lansing Tennis Club incident, had engaged in other similar programming to promote its private interests.

Issue (e)—The Ferman Letter

28. Some background is appropriate here in considering the Ferman letter. The Gross memos to Staudt on the LTC advertising account were in some fashion removed from Staudt's desk and turned over to the print news media where the incident received substantial press coverage. The Commission was thus alerted to a possible problem and on February 1, 1974, mr. William Ray, Chief, Complaints and Compliance Division of the Commission's Broadcast Bureau, requested GTI to comment on allegations that Harold Gross had ordered news blackout of the Lansing Tennis Club. As a part of the GTI response to the William Ray letter, there was attached the affidavit of Richard Ferman, Head Pro and Assistant Manager of the LTC. Ferman stated that GTI had provided fair and adequate coverage to the club's major events. Prior to the Ferman letter, GTI had requested Betty Schultz to provide a letter using her own language and assisted only by what the GTI records showed as to the prior coverage of the LTC. The Schultz letter contained some language, which Harold Gross believed would not be particularly helpful in resolving the matters raised in the William Ray letter. The GTI counsel agreed and this time a revised letter was prepared by GTI's counsel for submission to the LTC and then to the Commission. Staudt, who had obtained the first letter, was requested by GTI to have the revised letter executed. The revised letter was executed by Mr. Ferman in the absence of Mrs. Schultz, who was in the hospital at this time. There is some evidence that Staudt was aware that Schultz was unavailable, but, there is no evidence that Staudt ever told Harold Gross about this. The revised letter, as executed by Ferman, did not represent Schultz's views of GTI's coverage of the LTC. When Harold Gross did become aware that Schultz was not available a GTI duty came into existence which required that Ferman be told the true facts as to the difference between the unacceptable Schultz letter and the GTI prepared letter Ferman was requested to execute. This failure to reveal the exact nature of the difference between the two letters

led Ferman to believe that the revised letter was acceptable to Schultz and the LTC. However, upon review of all the facts relating to the revision of the Schultz letter as contained in the Ferman letter, an intent to deceive the Commission is not shown. As will be seen *infra,* GTI did take steps to withdraw any reliance on the Ferman letter before the Commission placed any reliance on the filing of the letter.

29. The GTI response to the William Ray letter was filed with the Ferman letter attached, on February 28, 1974. Harold Gross was aware on February 28, 1974 that questions had been raised as to the accuracy of the representations in the Ferman letter and Harold Gross or GTI would have had time to instruct Washington Communication counsel to delete the Ferman letter from the GTI response to the Ray letter. Harold Gross subsequently had a face-to-face meeting with Mrs. Schultz on March 1, 1974 which confirmed, beyond a doubt, the information received on February 28, 1974, i.e., statements made in the Ferman letter were incorrect as far as Mrs. Schultz and the LTC were concerned. GTI did withdraw any reliance on the Ferman letter on March 8, 1974 and Harold Gross notified Mrs. Schultz on March 4, 1974 that GTI was withdrawing reliance on the Ferman letter and was so notifying the Commission. While technically it can be concluded that GTI did not act as soon as possible after it learned of Mrs. Schultz's belief that the Ferman letter was incorrect, GTI did act in a responsible way upon receipt of this knowledge. The face-to-face meeting between Mrs. Schultz and Harold Gross took place on Friday, March 1, 1974 and on the next business day, Monday, March 4, 1974 the decision was made to withdraw reliance on the Ferman letter and Mrs. Schultz was told about this that same day and the Commission formally notified of such action on March 8, 1974. All this was well before the Commission took any action in reliance on the Ferman letter. Based on all the facts on the Ferman letter as found under Issue (e), it is concluded that GTI has not made any misrepresentations or been lacking in candor with respect to this matter. This conclusion does not imply that the GTI conduct here is a model to be followed. Rather, the incident is not found to be of such decisional significance as to be further considered in this proceeding and Issue (e) is resolved favorably to GTI.

Clipping Issue

30. The Review Board added the network clipping issue based on allegations that WJIM-TV had cut out network programming to present local news or advertising. The burden of proceeding was placed on ACLU and the burden of proof on GTI. *Gross Telecasting, Inc.*, 48 FCC 2d 1186 (1974).

31. Some background needs to be set forth. While the Memorandum Opinion and Order which added the so-called "clipping" issue did not mention Section 73.1205 of the Rules, the Commission release on *Clip-*

ping of Radio and Television Network Programs, 40 FCC 2d 136 cites the Rule in footnote 13 of the Review Board's Order. This release makes clear that "where the clipped material contains advertising, licensees are subject to forfeiture under the fraudulent billing rule, Section 73.1205." While the instant proceeding does not involve a forfeiture, it does involve Section 73.1205 of the Rules and the revocation sanction is now clearly applicable for a violation of this rule. The question of fraudulent billing would arise in this case if the record is found to establish that the network is not aware of the clipping because of certifications submitted to the network by the affiliate station.

32. The overall question of fraudulent billing has been the subject of numerous statements as to the Commission's firm position to stop this practice. See *Applicability of Fraudulent Billing Rule*, 1 FCC 2d 1085 (1965); *Fraudulent Billing Practices*, 23 FCC 2d 70, 72 (1970); *Renewal or Revocation Hearing Proceedings in Future Fraudulent Billing Cases*, 38 FCC 2d 1051 (1972) and *Fraudulent Billing Practices*, 53 FCC 2d 900 (1975). The 1970 statement specifically noted as fraudulent any bill misrepresenting the length of a commercial as broadcast and the 1965 rule prohibits billing 'which misrepresents the quantity of advertising actually broadcast." It also should be stated at the outset that fraudulent billing has taken many forms in the past and no doubt new forms will be devised, limited only by the ingenuity of man. Thus, even without specific prohibition on clipping during part of the time under consideration, this is not regarded as essential when fraud *per se* is involved.

33. A key element in the consideration is the network definition of a program as set forth in the contract CBS has with its affiliate WJIM-TV. Under the definition, the affiliate to be credited for carriage of the program must carry the complete music, sports, etc. of the program plus all associated network-originated announcements, credits and promo announcements. The affiliate may not cut-away from the network until the network signals such permission by placing the CBS "eye" logo on the system.[90] Accordingly, the matters examined in this case will deal with a failure to report to the network any deletions from the program as defined by the network and which definition is a part of the contract WJIM-TV has with CBS.

34. GTI urges as a defense that in the clipping which it admits did take place, only promotional announcements, credits and like material was deleted. This begs the question. This did constitute a network clip of the program and the clip either was not reported to the network, or, in the more usual case, the program was reported to the network as carried, that is to say the entire program was carried. It is at this point that the

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[90] A clear distinction should be kept in mind between the official CBS "eye" logo and the slide manufactured by GTI to represent this logo.

element of possible fraud takes place. The network will use the certifications of its affiliates as a basis for representing to advertisers that a given commercial was aired over so many stations which would not be true if a station clips but reports that the material was carried, i.e., false affiliate reports permit the network to bill for services not rendered.

35. It can be urged that if the network commercials are not clipped, there can be no fraud, but the record makes clear that promos, for example, are the means for the network to sell itself. In any event, it has been held that "network clipping" means that the licensee has not fulfilled its contractual obligation to the network, by verifying that specific network material was broadcast in full when thee were in fact cancellations or deletions. *Clipping of Radio and Television Programs, supra.*

36. The record also shows that in spite of the GTI belief that no network commercials were clipped, there was no way to check. Colegrove relied on the original CBS announcement schedule and ignored subsequent revisions and there was no way to know how much time a network would use for commercials, credits or promos in any given program.

37. It was Harold Gross who signed the GTI-CBS affiliate contract in 1966 which contained the definition of a program. harold Gross believed that he did carry the entire program as long as no commercials were clipped. But the record is also clear that Harold Gross was active on boards representing affiliate interests in meetings with CBS and that the affiliates were continually interested in compensation and the amount of time available to the affiliates for its commercials. If Harold Gross did not know how the network was classifying a program, he must be held to be aware of the contract he signed, particularly in view of the fact that he was actively engaged, as a CBS affiliate board member, with discussing the entire range of matters surrounding the time allowed to an affiliate for its station identification and local commercials.

38. The record, however, contains evidence of actual knowledge on the part of Harold Gross. In August, 1969, Harold Gross sent a memo to Sherck noting that WJIM-TV had joined the network late the previous Sunday after carrying a full minute or more of commercials. Harold Gross' solution to the problem was to instruct Sherck to have a note placed on the log advising the master control operators to get out of the preceding program on the credits so that we can join the following program on time (Bureau Exhibit D). Thee can be only one interpretation of this memo and that is that Gross is proposing to insert a pre-planned clip at the point the network credits start and before the network displays the logo "eye." Tom Jones told Harold Gross in November 1969 that WJIM-TV was cutting out virtually every CBS prime-time program early which eliminated network promotions and expanded breaks in The Merv Griffin Show (Bureau Exhibit F). In September 1970, Harold Gross instructed his staff that if the local commercial was longer than the permitted CBS break, the

operator should "join Griffin late (at an opportune time) and not lose a commercial announcement. (Bureau Exhibit S). Again, the Gross intent is clear, i.e., clip the network program to the extent required to get the WJIM-TV commercial on-the-air. It appears that in spite of the definition of a program, Gross continued to believe that by deleting only "fill" or other closing materials, he was not deleting a network program. It is also noted here that GTI takes the position that when it did delete so-called "fill" material, it was replaced by local news or news headlines or public service announcements. Section 73.1205 of the Rules would create no problem for GTI if when Gross deleted or clipped parts of network programs *it reported such deletion* to the network. Perhaps the network would have a problem with too many reported clips, but, a possible rule violation and fraud would not be involved. As will be seen, such clips were rarely reported to the network.

39. Harold Gross did sent two memoranda to his staff in December 1969 which directed that The Merv Griffin Show and the "CBS Evening News" be joined on time. However, by early 1970, Harold Gross authorized late joins of The Merv Griffin Show as well as the CBS Thursday and Friday night movies, if the network movies ran beyond 11:00 p.m. Late-breaking news was also authorized as a basis to join The Merv Griffin Show late. All such instructions were silent on reporting any of these late joins to the network and they were not reported. During the period 1968–1971, both Harold and James Gross would edit the WJIM-TV editorials which ran three times a week. Some 10–15% of the editorials ran longer than the two-minute average. In May 1970, Harold Gross addressed the problem created by a long editorial. By memo (Bureau Exhibit K), he directed that the WJIM-TV news show not be cut short. Rather, the weather or sports[91] part of the news show could be cut short[92] or "we can join Merv Griffin late." Again, the Gross intent is clear—WJIM-TV is to take the time required to complete its full 11:00 p.m. news show and a longer than average length editorial by clipping The Merv Griffin Show.

40. Harold Gross took a personal interest in selling advertising for sports programs, particularly where the spot involved a sale of commercialtime for an entire season, such as the football season. In 1969, he did sell an extra spot for WJIM-TV entire season package of National Football League games. It was clear the spot could not be accommodated since the commercial spots available had already been sold out, but the spot was accommodated. James Gross was present at a meeting where it was decided to create a break during a network pre-game telecast so that an extra commercial could be run. Halftime breaks of the NFL games for the

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[91] GTI divided its news show into several parts. The total program did contain news, weather and sports, but only the local and national news was considered to be the news part of the program.

[92] There is no evidence to support a conclusion that this option was used.

1969–1970 season were expanded for extra commercials. Once, Gross noticed that one of the expanded NFL breaks resulted in the WJIM-TV operator on duty not rejoining the network until an entire play of the game had been missed. Gross' suggestion was to cut-away from the network football telecast early, in short get the commercials in, but, don't miss any plays in the future.

41. John Cundiff told harold Gross, probably in the fall of 1970, that a particular football game was sold out. On this and other occasions, Gross directed Cundiff to keep selling and not to worry how the commercials would fit in.

42. Election return nights presented a special problem for GTI, i.e., how to get the local commercials in on a night when the network was presenting special programming, with periodic breaks so the local affiliates could update returns on local elections. The GTI answer was to clip the network in one instance by as much as nine minutes, 20 seconds. Other types of special network programming presented similar problems to GTI. The 1970 Thanksgiving Day Parade aired three 30-second commercials during a network-authorized break of 72 seconds. In February 1971, during the network Apollo XIV telecast, a 60-second break was enlarged by WJIM-TV to insert an additional 60-second commercial. Harold Gross justified this as he believed the particular segment of the parade and the Apollo[93] program was "unimportant" (Tr. 21156–57). The effect of this was the same as before, the network was clipped.

43. All of this leads up to March 17, 1971, when William B. Ray wrote GTI enclosing a viewer complaint about alleged clipping. Mr. Ray requested a response as to what WJIM-TV's policies were with respect to the insertion of advertising in network programs. The complaint letter, attached to Mr. Ray's letter, singled out a number of NBC and CBS programs[94] in which it was alleged that programming was abruptly interrupted by local commercials. It was the GTI position that the Ray letter was strictly limited to requesting the WJIM-TV policies on inserting local commercials so as to interrupt the network program content. Both Messrs. Harold Gross and Sherck conferred and agreed that the only form of early disengagement from the network was that preceding a station break. With this limited interpretation, harold Gross prepared an answer to the Ray letter and stated that WJIM-TV had not inserted local commercials in the body of either The Merv Griffin Show or the CBS Evening

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[93] The Apollo space shot had preempted the originally-scheduled "Martha Dixon Show" and the noon local news and WJIM-TV had a number of local commercials scheduled for these programs. The justification given by GTI was that the space shot special program resulted from a late change in network programming and it could not adjust the commercial load. (Bureau Exhibit V; Tr. 21108, 21257–59, 19660–62).

[94] The CBS outlet is WJIM-TV and the NBC network station is WILX-TV, Jackson, Michigan. Station WILX-TV is not involved in this proceeding.

News. This letter was filed with the FCC and represented a candid answer by GTI only if GTI's tunnel-vision approach can be accepted. In view of the entire record, the answer of GTI cannot be viewed as satisfactory. More important to this point, it marks a clear point where GTI, Harold Gross and Sherck had to face up to the requirements of Section 73.1205 of the Rules not in terms of double billing but clipping.

44. Next, on July 30, 1971, GTI received a memo from its Washington communications law firm advising of growing Commission concern on clipping and that the Commission had fined a Louisiana station $7,500 for *inter alia* submitting false monthly certificates to the Mutual Broadcasting System.[95] At this very time, WJIM-TV was regularly submitting false certificates to CBS over Sherck's signature and both Sheck and Harold Gross had just answered a Commission letter the previous March denying inserting local commercials in the body of a network program, but recognizing, and not advising the Commission, that there were clips at the beginning and end of network shows. There is no evidence that GTI took steps to review and reform its practices.

45. In February 1972, GTI's Washington communications counsel told GTI of the Commission's *Las Vegas* ruling[96] proposing a $10,000 forfeiture for clipping. The *Las Vegas* matter involved the practice of joining network programs late (up to 30 to 40 seconds). and of discontinuing broadcast of such programs before their conclusion by substituting local commercials for program credits, network promos and even sponsor identification announcements and the station regularly reported such programs as carried in their entirety to the ABC network. The GTI counsel explained exactly what was involved in the *Las Vegas* case and it would have taken little or no review on GTI's part to realize that GTI was doing exactly the same thing. GTI's Washington counsel told GTI that the practice considererd in the *Las Vegas* case violated Section 73.1205 of the Rules. At the time of the counsel's *Las Vegas* memo to GTI, Harold Gross was away from the station during the summer of 1971 having suffered a major health problem and a serious operation, but it can be concluded that by March of 1972, Harold Gross was made aware of the *Las Vegas* case and legal memo while in Arizona. Sherck, James Gross and Tom Jones were aware of the *Las Vegas* memo. It is the testimony of Harold and James Gross, Sherck and Jones that this was the first time that they were aware of any Commission policy relative to network clipping as distinguished from Commission policies on double or fraudulent billing. It appears that the advisories from counsel on network clipping had been forwarded to the GTI auditing department and Mr. Lloyd L. Tremper,

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[95] *Radiozark Broadcasting of Louisiana, Inc.*, 32 FCC 2d 603 (1971).

[96] *Notice of Apparent Liability issued to Channel 13 of Las Vegas, Inc.*, 37 FCC 2d 548 (1972).

Jr., GTI's auditor, recalled receiving a copy of the *Radiozark* ruling from counsel.

46. It is the GTI position that when Harold Gross did return to GTI after his long illness, he directed Sherck both orally and in writing to comply with the Commission ruling in the *Las Vegas* matter. As will be evident, the practice did not stop. James Gross had considered the contents of the *Las Vegas* legal memo before his father returned from his illness and he declined to take action until his father returned—about one month later. Even if you assume that GTI did not realize the connection between the Commission's notices of fraudulent or double billing and network clipping, prompt action was certainly required at this point to check the GTI procedure and terminate any network clipping.

47. This was not the last time GTI had the *Radiozark* and *Las Vegas* rulings called to its attention. On March 13, 1973, Bruce Bryant, CBS' Vice President for Affiliate Relations sent a letter referring to these Commission actions and warned that an affiliate's submission of a false certificate of performance was a violation of Section 73.1205 of the Rules, was probably fraud and was considered a serious break of the CBS affiliation agreement. The CBS memo made clear that if an affiliate should delete any part of a network program, it was to be reported in the remarks column of the compensation report. This CBS memo was reviewed by James Gross and referred to Sherck without action. There was no discussion with Harold Gross, Sherck or Tremper.

48. Things seemed to improve in that clipping had appeared to cease by the summer of 1972. But by the fall of 1972, Tom Jones went to Harold Gross and advised that not only had WJIM-TV resumed clipping, but more important, Jones, who did not prepare network reports, discovered that the reports WJIM-TV filed with CBS had falsely represented that WJIM-TV carrying the entire network program.[97] At this time, the WJIM-TV practice was simply to place a checkmark after the program if it was carried and no notation was contained on these reports if WJIM-TV had joined programs late or left programs early. Jones was told to mind his own business.

49. Harold Gross did attempt to correct the matter of false reporting to the network by requiring the exact on and off times to be used. Still, there were no entries in the remarks column if a program had not been carried in its entirety and this would not account for any unauthorized breaks during a program. Further, it would be almost impossible for the network to determine if the program was carried in its entirety unless someone at

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[97] It is GTI's position that during the summer of 1972, GTI had instituted a policy that when existing local advertising contracts ran out, such contracts were either not renewed or renewed for a lesser number of commercials so that GTI could phase out all clipping. Jones, however, suggests that the summer is a low advertising period and with fall, things returned to normal as far as clipping was concerned.

CBS would separately compute the actual on and off time for each of its programs and compare it against the Gross network report. Thus, while Harold Gross may have believed that his new system of entering the actual on and off times would provide the network with information on clipped programs, it still created the impression and did in fact result in the network treating such entries as representing carriage of the entire program. It is not possible to credit Gross with such belief when, as an astute businessman, he must be held to know that the elaborated timing of programs provided little or no information to the network and the proper way to show a deletion was to state that fact under the remarks column. Harold Gross may be said to have instituted policies in September, 1972 to terminate clipping and clipping incidents appeared to be reduced. The findings show that after this date, WJIM-TV did delete some 77 CBS commercials and in about 63 of these instances, the deletion was not reported to CBS.

50. Other problems occurred at GTI with respect to clipping post-September 1972. In February, 1973, Harold Gross was again concerned about getting news headlines on-the-air before the 11:00 p.m. news program started. Thus, Ralph Allen was ordered to place such news headlines "in the closing of the CBS show [at 10:59] even if it means eliminating the credits." The Martha Dixon Show[98] ran over resulting in a late join of the network. Again, the old problem GTI had with CBS special programming showed up. One too many spots were sold during the network feed of the Kentucky Derby and WJIM-TV deleted a part of the Derby so it "could get it in someplace" (Tr. 21107) and the Derby was certified to CBS as carried in its entirety.

51. There was a CBS affiliate's conference in May 1973 and by now GTI actually did take firm and effective measures to terminate clipping. However, by this time, WILX-TV (the NBC network affiliate) had advised GTI that it believed clipping was going on at WJIM-TV and unless it stopped, WLIX would take the matter up with the Commission.

52. There was still confusion after May 1973. For example, the GTI memo announcing a firm no-clipping policy was questioned by employees to determine if this policy applied to other than nighttime prime-time programs. James Gross did not know the answer and for a period, clips were still scheduled in WJIM-TV non prime-time programs. There is the Kentucky Derby incident described above. Tim Staudt still believed that if the sports part of the 11:00 p.m. news ran late, it was permissible to join CBS late and some extra spots were contained in children's Saturday morning programming which resulted in Colegrove being placed on pro-

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[98] The Martha Dixon Show had a long history of run-overs and GTI did try to deal with this problem. This is one of the few areas where GTI did make efforts to curb the practice, though not always successful.

bation. The probation was never again discussed until Colegrove was given a salary increase. It also should be noted that the WJIM-TV application had been set for hearing on April 22, 1974 and on May 14, 1974, ACLU had petitioned the Commission to add a clipping issue against GTI.

53. The GTI defenses to all of this is to point out that it is only when one masses and compresses those facts that an aggravated picture of clipping develops. If you spread this out over the actual time sequence, it will be shown to be of no major consequence. Further, the offense of clipping was done at a time when the Commission had issued no policy statement directly related to the clipping practice.

54. All of these defenses are rejected; the fraudulent billing rule was enacted in 1965 (Section 73.1205 of the Rules). Even without such a rule, the Commission is entitled to move against a practice that is manifestly fraudulent. There were reports submitted regularly by WJIM-TV to CBS which clearly represented that WJIM-TV had carried the network programs in their entirety. Such reports were not only a basis for the CBS compensation to WJIM-TV, but also served as a basis for CBS to bill its advertisers in situations where both CBS and the advertiser believed the matter was carried on all the networks, at least that part ordered, when such was not the fact insofar as WJIM-TV was concerned. Harold Gross was an astute businessman and he must be held accountable for the violation of Section 73.1205 of the Rules. The GTI argument of compression may be valid if it were shown that GTI policies were in place against clipping, which were not, and that the facts show only sporadic clips over time caused by some innocent oversight or an occasional operator error. The mistake would occur here only if the GTI employees failed to follow GTI directives, primarily Harold Gross' directives, explaining how to clip, and such instructions were silent on what to tell the network about such practice. The fact that GTI had just about terminated the practice on its own, before the issue was designated against it, is not a valid defense. At this time, GTI knew that its competition, WILX, was monitoring the WJIM-TV programs for clips and it was aware that the ACLU was seeking an issue on the matter.

55. Based on all facts, it must be concluded that GTI did violate Section 73.1205 of the Rules and that such violation was wilful. Such conclusion is a basis for denial of the renewal of license application.

Clipping Misrepresentation Issue

56. The Review Board added this issue based on a showing that, notwithstanding Harold Gross' representation to the Commission in a letter of March 25, 1971, WJIM-TV had engaged in network clipping and Harold Gross knew it had. The Review Board also had a concern that Gross may not have ascertained the facts before responding. The burden

of proceeding was placed on the Bureau and the burden of proof was placed on the applicant. *Gross Telecasting, Inc.*, 55 FCC 2d 676 (1975). Under this issue, there will be examined in detail the exchange of correspondence between Mr. William B. Ray of the FCC and Mr. Harold Gross in March, 1971 (Bureau Exhibits A–B). This matter has previously been considered herein in comments with the clipping issue.

57. On March 17, 1971, Ray sent a a letter to GTI enclosing a complaint from Mrs. R. Cunningham. It was Mrs. Cunningham's position that both WJIM-TV (NBC, Channel 10, Jackson, Michigan) and WJIM-TV (CBS) had a practice of inserting local commercials in network programs. Among others, she labeled the practice on The Merv Griffin Show and the CBS Evening News as "chronic". Ray's letter to GTI requested the following question be answered:

> Did or does station WJIM-TV insert advertising on network programs at other than the scheduled times in such a manner as to affect the program content of such broadcasts? If so, state when and under what circumstances, and whether it is the policy of the licensee to insert commercials or other material in programs, join them late or leave them early with such effect. (Bureau Exhibit A, p. 1).

On March 25, 1971, Harold Gross replied, in pertinent part, to the Ray letter as follows:

> It is not now, nor has it been in the past, our policy or practice to insert locally originated commercial material within the body of a network telecast. From time-to-time, and on limited occasions, the network advises us of unsold commercial positions within a network program and authorizes our use of these positions for the insertion of locally originated advertising. In these instances, we have made use of these authorized availabilities for the insertion of local advertising, but limited to the designated time and specific position(s).
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> * * *
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> Since the format of the [Merv Griffin] program is loosely designed and flows without specific timings, it is understandable that a viewer could erroneously develop the impression that a local station was covering network program material.

Gross acknowledged that WJIM-TV broadcast a full 30 minutes of news prior to joining Merv Griffin when Thursday and Friday Night Movies ran past 11:00 P.M. and closed by saying:

> In summary, WJIM-TV does not insert local material or advertising in network programs except when authorized.

58. As previously concluded, under the clipping issue, GTI did insert local commercials into the body of a network program. Harold Gross had been told by his staff in 1969 (Tom Jones) that WJIM-TV was overscheduling the authorized network breaks. It was Harold Gross who told Cundiff to keep selling commercials on a sports program, and somehow they would be placed in the program. In view of such a policy, established by

Harold Gross himself, it was not true that WJIM-TV, as Gross suggests in his response, only inserts local advertising in those cases where it is authorized by the network and then it is limited to the designated time and specific position. Such statements in the Harold Gross reply were absolutely misleading and contained not even a hint as to the true policy at WJIM-TV on clipping.

59. Gross suggests that Mrs. Cunningham did not know what she was talking about and suggested that perhaps Mrs. Cunningham was confused by the loose format of The Merv Griffin Show so that it was understandable how a viewer could get an an impression that part of the show was covered for a local commercial. But for over a year prior to this, GTI had clipped part of The Merv Griffin Show because of the difficulties of completing its 11:00 P.M. news on time. Harold Gross did tell the Commission that WJIM-TV ran over its 11:00 P.M. news show on those nights when CBS ran its Thursday and Friday night movies past 11:00 P.M. But nothing was said about the WJIM-TV policy on late-breaking news, long editorials or when the 11:00 P.M. news show simply ran over for any reason. The GTI response to the Ray letter was not consistent with the actual practices of GTI from 1969 to 1971.

60. The entire GTI approach to the preparation of the answer to the Ray letter clearly indicates that it was never the intent of GTI to give a full and accurate answer to the Commission. Sherck prepared the draft answer within 24 hours after the receipt of the Ray letter, and Gross signed the letter on the same day he received the draft from Sherck. Neither Gross nor Sherck made any review of logs and conducted no investigation. Actually, both already had accurate knowledge of the deletions in The Merv Griffin Show. Rather, Gross and Sherck directed their attention not to Ray's question, but, to the narrowest possible view of the scope of Mrs. Cunningham's complaint. With such a narrow definition of the scope of the complaint, the Ray question was then also so limited and thus was a basis for Gross and Sherck to conclude that the response to the Ray letter need not deal with the general policies at WJIM-TV on deleting parts of network programs. This is simply not an acceptable explanation. First, the Cunningham letter was general. It spoke of a practice at both stations that was chronic and she provided some specific examples. Even if the GTI version of the actual scope of the Ray question is resolved in GTI's favor, why did GTI include the statement in its response to Ray: "It is not now, nor has it been in the past, our policy or practice to insert locally-originated commercial material within the body of a network telecast". There can be no mental reservations on GTI's part that this part of its response only refers to The Merv Griffin Show. By any test, it is a general statement of policy responsive to a question raised by the Commission, and, which answer was intended to resolve, favorably to GTI, any suggestion that GTI may be involved in a most serious violation.

It follows that the Gross and Sherck explanation of how they viewed the Ray letter cannot be accepted. They knew there was a problem based on established policy at WJIM-TV, but, they were not going to tell the Commission about it. Not only did they refuse to reveal the true facts which the question called for, they attempted to mislead the Commission. In fact, they did mislead the Commission until the issue was added.

61. It is concluded that the Gross response to the Ray letter was serious misrepresentation and was designed to mislead the Commission on a matter which was of serious concern to the Commission. Such conclusion, standing alone, would warrant denial of the GTI renewal of license applications. The Commission has long stressed the fundamental importance of truth and complete candor on the part of the applicants and licensees in their dealing with the Commission. *Western Communications, Inc.*, 59 FCC 2d 1441 (1976); *Nick J. Chaconas*, 28 FCC 2d 231 (1971); *WMOZ, Inc.*, 36 FCC 202 (1964); *3 J's Broadcasting*, 41 FCC 2d 669 (Rev. Bd. 1973) and *FCC* v. *WOKO, Inc.*, 329 U.S. 223 (1946).

Public File Issue

62. This issue was added by the Review Board on the basis of allegations that Denies Miller, a former graduate student at Michigan State University, had been denied access to WJIM-TV's 1970 license renewal file. *Gross Telecasting, Inc.*, 48 FCC 2d 1186 (1974). Section 1.526 of the Rules deals with the files a licensee, such as GTI, must maintain for inspection by the public. The public file is to contain copies of the license renewal applications and amendments; copies of all documents incorporated by reference; a statement, if applicable, that a Petition to Deny has been filed; a copy of every written agreement with a citizens group (Rule 1.526(a)(1)); annual employment reports and related documents (Rule 1.526(a)(5)); letters from members of the public (Rule 1.526(a)(7)); the annual programming reports and logs for the composite week (Rule 1.526(a)(8)).

63. Based upon the facts, it is concluded that GTI did not violate Section 1.526 of the Rules, other than technical violations, which in view of the entire record on this issue, cannot be found to reflect adversely on GTI.

64. In applying Section 1.526 of the Rules, the Commission has established some guidelines. The Commission has looked at both the allegation of non-compliance and the licensee's overall effort to comply with the Commission's requirements and has applied a rule of reason in assessing the impact on a licensee's qualifications. See *Felix H. Morales*, 58 FCC 2d 642 (1976). Thus, while conscious harassment to discourage individuals reviewing the public file may have an adverse effect on the licensee's qualifications, e.g., *Town and Country Radio, Inc.*, 65 FCC 2d 694 (Rev. Bd. 1977), the Commission looks to whether an incident was an isolated one, *Horizon Communications Corp.*, 61 FCC 2d 498 (1976), whether the

licensee demonstrated an intent to withhold the file, *United Broadcasting Company,* 58 FCC 2d 1346 (Rev. Bd. 1976), whether the individual seeking to view the file was prejudiced in any way by the licensee's conduct, *Felix H. Morales, supra,* and whether the licensee took corrective action relative to its public file procedures, *Storer Broadcasting Company,* 58 FCC 2d 468 (1976).

65. There was a conflict of testimony in which Miller asserts that Harold Gross' secretary, Ms. Burrell, would not provide Miller with the public file upon request. Burrell denies this, but it does appear that at least for a period of time Miller was not provided with the file. However, this incident does not appear to have seriously prejudiced Miller. Miller successfully completed the requirements for her Master's degree which included a thesis on the WJIM-TV news operation. Further, Miller had previously been afforded a wide-ranging access to the entire WJIM-TV news operation. Thus, while Miller did not obtain the file on request to Burrell, the violation is not of a nature that would be considered disqualifying.

66. There were complaints by CUBB and LCCT representatives when viewing the public file that they believed GTI officials were over-bearing and intimidating. It is true that when CUBB and LCCT officials first began to examine the public file it was done in the presence of a GTI representative. GTI alleged it was due to secure the safety of the file and not to harass or discourage the individuals. Further, the one time a complaint was registered, relative to the presence of a GTI representative, that representative, Mr. Jones, left the room. Other conduct of GTI representatives while the public files were being inspected may have been viewed as less than satisfactory but what is satisfactory conduct must be tested against some objective test of a reasonable person. Further, if some conduct of the licensee is not acceptable, the record shows that would be corrected once GTI knew about it.

67. The mere presence of a representative in the room where public file material is being examined is not violation of the Rule. *Miami Valley Broadcasting Corporation,* 48 FCC 2d 177, 198 (1974). But the representative cannot conduct himself so as to inhibit meaningful examination and discussion. See *Licensee's Local Public Files,* 32 FCC 2d 729, 730 (1971). There was a complaint that individuals had to wait 15 to as long as 40 minutes before being granted access to the file. Requiring an individual to wait a brief time—even up to one hour—before making the public file available is not a violation of the Rule. See *KSD/KSD-TV, Inc.,* 61 FCC 2d 504 (1976).

68. It is urged that Harold Gross had a strong hostility toward citizens' groups and this would be reflected in the GTI actions on the public files. The record contains an example of Tom Jones, on his own, undertaking to respond to a newspaper article in which a citizen's group was critical of

GTI. The Grosses were unusually critical of to Jones response to the newspaper article. However, both Jones and James Gross agreed that the criticism was based on Jones' assumption of authority to speak for the company without prior authorization. As Jones testified in many areas of this proceeding, it became apparent that Jones was a forceful and dynamic person who had held many supervisory positions at the company and that he had a long history of attempting to trouble-shoot problems between the company and employees and the community served by GTI. Employees would regularly go the Jones with their problems even though Jones was not then their supervisor. Likewise, members of the public would seek out Jones when they believed the station action was not all that was desired. For example, when Miller said she could not get the public files, she turned to Jones to get the matter straightened out. Based on the record and the overall observation of Jones as a witness, it can be concluded that James Gross was upset about Jones' assumption of authority to speak for GTI in this instance.

69. There was a time in July, 1973 when the composite week logs were not produced upon request for inspection. At the time it appears that the logs had been sent to Washington to be submitted to the Commission with the renewal of license application. During this period, Jones realized the logs were not in the public file and he could not find them. About one month later, Jones did locate the logs and they were made part of the public file. No one was injured by this delay and no intent to conceal can be found.

70. A licensee may request that an individual seeking to review a public file to provide the name and address (*Licensee's Local Public Files (WBRN, Inc.)*), 32 FCC 2d 729 (1971). A licensee may request that the individual fill out a request form with this information. *Radio New York Worldwide, Inc.*, 56 FCC 2d 428 (1975). However, a station may not require persons inspecting the public file to provide information concerning their organization affiliation; the Commission has indicated that forms requesting that information do not constitute a violation of the Rule. See *CBS, Inc.*, 57 FCC 2d 505, 522 (1976). At one time GTI forms did ask for the organization affiliation. There was a dispute in the evidence whether such information was required or simply requested. When GTI found out that the use of the form was objectionable to the public, GTI abandoned the use of the form. No intent to harass can be found for this incident.

71. There is also an issue whether GTI failed to provide copies of letters and contracts with citizens' groups to those requests to see the public file. The record shows that the WJIM-TV public file had increased in size to a point it required the use of two file drawers and for a while those requesting to see the file would only be shown the contents of one file drawer. As soon as GTI found out about this, steps were taken to correct

the matter by rebinding all the application materials and sorting it out by subject matter. No intent to harass or withhold information can be concluded from this incident.

72. Lastly, it is appropriate to consider the overall attitude of GTI towards affording the public information. James Gross related cooperation with students of Michigan State Uniersity through personal assistance to students desiring to deal with some aspect of station operation. The 1973 WJIM-TV renewal was the subject to wide-spread interest in the Lansing area so much so that GTI made its files available after regular business hours to accommodate this large demand. The record also shows no reason why GTI would want to withhold the public files. In fact, a comparison between the 1970 and 1973 renewal of license application would show that the performance during the 1970–1973 license period exceeded the 1970 promise.

73. It is concluded that GTI has substantially complied with Section 1.526 of the Rules and such violations, as shown, were not intended and cause no harm to the public.

Weather Issue

74. This issue was added by the Review Board to determine if WJIM-TV violated Section 73.1208 of the Rules, and, if so, the effect on its qualifications. The burden of proceeding was placed on ACLU and the burden of proof on the applicant. Rule 73.1208 reads as follows:

> (a) Any taped, filmed or *recorded program material in which time is of special significance,* or by which an affirmative attempt is made to create the impression that it is occurring simultaneously with the broadcast, shall be announced at the beginning as taped, filmed or recorded. The language of the announcement shall be clear and in terms commonly understood by the public. For television stations, the announcement may be made visually or aurally.
>
> (b) Taped, filmed, or recorded announcements which are of a commercial, promotional or public service nature need not be identified as taped, filmed or recorded. (Emphasis added.)

75. The facts are clear on this issue that between October, 1973 and September, 1974, the weather part of the 11:00 P.M. news program was taped and no notice or disclaimer was contained in the weather show of this practice. Section 73.1208 contains the language ". . . program material in which time is of special significance. . . ." It is concluded that weather forecasts are inherently program material ". . . in which time is of special significance. . . ." The record contains the testimony of Charles Snider, an expert meteorologist in charge of the Detroit station, that weather forecasts are "highly perishable" products and the Presiding Judge adopts Mr. Snider's testimony in this regard as a valid conclusion. With this background, the method of presentation of the GTI weather at

11:25 P.M.[99] each weekday has to be examined. The actual forecast, as aired, at 11:25 P.M. consisted of a tape prepared about 6:40 P.M. that same evening which in turn was based on the weather forecast from the Detroit office issued at 5:10 P.M. After Mr. Zartman had completed his 6:00 P.M. weather program he would check for updated weather information and changed the weather map to a more look-ahead approach which focused on a look-ahead approach rather than a summary of the weather for that day. During the taping of the 11:25 P.M. weather forecast (done about 6:40 P.M.) current weather statistics were left off and not referred to by Zartman. The current statistics would then be shown on half the screen based on a 10:00 P.M. weather wire feed. The net result of this was that the weather at 11:25 P.M. was based on a report already over six hours old, without any disclaimer until ACLU filed its Petition to Enlarge which forecast was combined with a display of current statistics, which appeared on the TV screen, based on 10:00 P.M. statistics. Thus, the TV viewer with this type of presentation could be induced to believe the weather program was live.

76. GTI offered proof to demonstrate that its taping practice was an acceptable procedure which practice was then followed by the industry. It presented Gordon Barnes, a qualified meteorologist, and he testified that "to his knowledge" he had not heard any discliamer being broadcast on a recorded weather forecast he was familiar with. Barnes has vast experience as a meteorologist and operates a weather forecasting service for radio stations and other clients which, among others, is utilized by stations in Boston, Washington, Duluth and other cities. He provides these radio station clients with recorded weather broadcasts and bases his observation of no disclaimer on listening to his clients' stations when he is in that particular town. This occasional monitoring by Mr. Barnes of this client's station for disclaimers is insufficient from an evidentiary standpoint to establish a business practice of omitting disclaimers. Even if such business practices were established by Mr. Barnes, based on acceptable evidence, this would not serve to modify the requirements of Section 73.1208 of the Rules. Likewise, Mr. Barnes cannot establish that the NOAA radio weather forecasts lack disclaimers because he does not listen to such forecasts more than once or twice a week and does not know how often such forecasts are updated. It also appears that Mr. Barnes does give recorded weather information on other than current forecasts such as a review of the weather for the previous week and long-range forecasts for three, six, and twelve months in advance. Thus, the question of time would not appear to be as significant in this type of weather broadcast. While Mr. Barnes does provide recorded weather information to radio station clients, his procedures are quite different from those

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[99] The weather part of the 11:00 P.M. news program commenced at about 11:25 P.M. each weeknight.

followed by GTI and cannot afford any justification for the GTI procedures. It is also observed that Mr. Barnes' recorded weather forecasts included text which stated the forecast was coming from his New York office.

77. The record shows that the 5:10 P.M. weather forecast was the last regular official forecast issued unless a significant change caused a revision. It is the GTI position that its taping procedure clearly anticipated that the taped forecast not be used where such changes occurred, and, on such nights the 11:25 P.M. weather news would be live. The record does not permit a conclusion that changes in the 5:10 P.M. Detroit forecast would routinely result in a live weather forecast over WJIM-TV at 11:25 P.M. that night. While John Bjoin testified that during the year tapes were used he may have asked Zartman to come in to do the 11:25 P.M. weather show live up to 80 times, the record will only support a finding that Zartman came in to do the show live 10 to 12 times. The record also shows that during the period in question, the 5:10 P.M. forecast was revised by the Detroit office some 57 weeknights and WJIM-TV ran a live forecast on nine of those nights. Thus, WJIM-TV was representing to the viewing public that its forecast was current up-to-date 48 nights when the Detroit weather bureau had determined its 5:10 P.M. forecast was no longer accurate.

78. GTI attacks the evidence of its out-of-date forecasts on some 48 nights because it did not have the video tapes of these weather broadcasts and thus it is not possible to conclude that the 48 forecasts were in fact not current and not in accord with the latest post 5:10 P.M. period up-date. It is true that the record will not permit a finding that the forecasts on the 48 nights in question were tapes of an obsolete forecast. However, the record does establish that the Grosses did approve the practice of taping weather forecasts for the 11:25 P.M. weather program without disclaimer, and without any real supervision as to how it would take reasonable steps to have a live weather forecast when necessary.

79. The record also contains other evidence. The station's operators manual did state as policy that "the most current forecasts and statistics must be used on the air." GTI must be held to be aware of its own policy.

80. Gross further had specific knowledge of the provisions of Section 73.1208 of the Rules at least by June, 1973 and before the taping of weather forecasts commenced in October, 1973. The record contains an exchange of correspondence between Mr. William B. Ray (FCC) and Mr. Harold Gross concerning the airing of a syndicated cooking program. The letter was based on a viewer complaint that the recorded portion of a cooking program was deceptive in that it appeared to suggest that a "special guest" was appearing live. Harold Gross answered Mr. Ray's letter and took the position that a pre-recorded announcement was not required because time was not of the essence. Mr. Gross went on to state

that GTI did observe the requirements of 73.1208 of the Rules in cases where public affairs or sports programs are carried on a delayed basis and time is of the essence. Thus, Mr. Gross made clear his understanding of Section 73.1208 of the Rules and, in particular, that part of the Rule which applies where time is of the essence.

81. Even after GTI was aware that ACLU would attempt to include an issue on the GTI taped weather forecasts, it carried an editorial which was to get the facts straight. The editorial went on to assert that its taped weather forecast was the latest official information from the United States Weather Bureau. Such an all-inclusive statement was not true.

82. Broadcasters must perform the vital task of fully and fairly informing the public. *Democratic National Convention Television Coverage*, 16 FCC 2d 650, 656 (1969). "Television is the dominate source of news for millions of Americans and they are entitled to expect the highest degree of integrity in its presentation." *Letter to Hon. Harley O. Staggers*, 25 RR 2d 413, 414 (1972). The Commission had made it clear that it expects reasonable diligence, supervision and control in order to insure that matter is not broadcast which will deceive or mislead the public. *CBS, Inc.*, 42 RR 2d 863, 870 (1978).

83. It is concluded that GTI has repeately and wilfully violated Section 73.1208 of the Rules. This conclusion will be considered in an overall evaluation of the renewal of the GTI licenses.

The Labor Issue

84. The labor practices issue was added to determine whether GTI engaged in labor practices inconsistent with the national labor policy as expressed in the National Labor Relations Act (NLRA). The issue was added in light of affidavits filed by ACLU tending to show a violation of NLRA and GTI affidavits which denied a violation. The Commission noted that the NLRB proceeding against GTI was terminated by a settlement without adjudication on the merits of the several allegations. The Commission placed the burden of proceeding on the ACLU and the burden of proof on GTI.[100]

85. ACLU alleges that GTI's conduct during and after the 1973 NABET organizing drive constituted unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the NLRA. Those statutory provisions provide, in pertinent part:

> (a) It shall be unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 of this title;

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[100] To this extent, there is argument by GTI that a labor controversy adjudicated under the NLRA by the Board requires that the Board prove the alleged violation, such as would be the case if the Commission issues a show cause order.

> (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a). [29 USC 158(a)(1), (3) and (5).]

By its own terms, Section 8(a) can be violated only if GTI interfered with, restrained or coerced its employees in the exercise of their Section 7 rights. These rights are as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3). (129 USC 157.)

The courts have applied an objective test to determine whether an employer has unlawfully interfered with, restrained or coerced employees in the exercise of their Section 7 rights. The NLRB has held in *Fidelity Telephone Company*, 236 NLRB No. 26, 98 LRRM 1210 (1978), in reviewing an employer's pre-election campaign speech that:

> A respondent is responsible only for the remarks it makes to employees and not for the impressions that employees may derive from the remarks. (98 LRRM at 1211.)

This type of holding by the NLRB was adopted verbatim from the holding of the court in *NLRB* v. *Illinois Tool Works*, 153 F.2d 811 81946). See also *NLRB* v. *Huntsville Manufacturing Co.*, 514 F.2d 723 (1975), and *Peerless of America, Inc.* v. *NLRB*, 484 F.2d 1108 (1973), where the courts have affirmed this objective test applicable to an alleged Section 8(a)(1) violation.

86. The record shows that in the development of the evidentiary facts, emphasis was placed on an employee's state of mind and ACLU urges that state of mind evidence be used in reaching a conclusion on a possible violation of Section 8(a)(1) of the NLRA. The citations make it clear that an objective standard must be applied which to juxtapose employer conduct and state of mind evidence would not be relevant under this test. This policy appears to be based on the need for actions under the NLRA to be pursuant to an established uniform, national standard of prescribed and permitted conduct and such standards could not exist if the individual employee's state of mind became the test of legality. This test is also comparable to the concept of the "reasonable man" test in law.

87. Another issue which is present in this case is just how far can an employer, such as GTI, go under the First Amendment to the United

States Constitution and Section 8(c) of the Act—the so-called "free speech" provision in urging its position with respect to a union.

Section 8(c) of the Act is as follows:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit. [29 USC 158(c).]

88. The case law on the limits of free speech in the statement made by or on behalf of an employer and an extreme anti-union film is discussed in 57 Iowa L. Rev. 1202, 1203 (1972). In *Southwire Company* v. *NLRB*, 383 F.2d 235 (1967),[101] the Fifth Circuit Court of Appeals described the film "And Women Must Weep" which was the subject of the law review article, in part, as follows:

> It is fair to say that the film places the church, morality, fair dealing, town pride and law and order on the side of those who object to unions and pits these forces against unfaithful union leaders, engaged in usurping power for their own ends and in gross violence. It shows the bad side of unionism and is designed to discourage union membership. Its impact is such that the union involved in the strike has created an answering film entitled "Anatomy of a Lie." (383 F.2d at 239–40).

It can be concluded that the facts in this case do not approach the gross violence found in the film considered in the *Southwire* case, but, the issue remains in this case to determine if the GTI activities exceeded the bounds of free speech permitted to an employer.

89. There were four campaign letters sent by GTI to its employees and statements made at the Starboard Tack Restaurant. Each of these statements is one of three types: (a) statements in which the Grosses revealed their dislike of unions representing their employees; (b) statements in which the Grosses suggested the union would cost the employees money and professional freedom; and (c) statements that all employment benefits were subject to good faith negotiations, if the union won. An employer can state his dislike for a union. See *Lundy Packing Company,* 223 NLRB No. 36, 1975–76 CCH NLRB, 16, 698, aff'd in part; rev'd, in part *Packing Company* v. *NLRB*, 549 F.2d 300 (1977), where an the following statement to his assembled employ

> We do not want a union in this company, and to use every legal means we can to 528[102].)

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[101] The *Southw* Sectio

[102]

It is permissible for an employer to state that employees are better off without a union. See *Indiana Rayon Corporation* v. *NLRB*, 355 F.2d 535 (1966). Statements made by GTI that a union might cost the employees money and professional freedom have been found to be within an employer's right of free speech. See for example *NLRB* v. *Herman Wilson Lumber Co., 355 F.2d 426 (1966), where the court stated in part:*

> It is well settled that under § 8(c) the employer must be regarded as a rightful contestant for his employees' loyalty in a union election. This section permits an employer to state his legal rights under the Act and to predict that dire economic consequences will follow from a union victory. (355 F.2d at 431.)

90. It is also permissible for an employer to state that all benefits are subject to negotiation, if the union wins. See for example *Automation and Measurement Division, The Bendix Corporation* v. *NLRB*, 400 F.2d 141 (1968).

91. It is concluded that the statements made at the Starboard Tack Restaurant and the four campaign letters are protected speech under 8(c) of the NLRA and do not constitute an unfair labor practice.

92. Prohibited interrogation of employees by GTI is another primary element of the ACLU charge. The evidence of record involves six employees.[103] The test to be applied here is to determine if the record as a whole, including the surrounding circumstances, shows an overall deliberate pattern to restrain or coerce the employee. *NLRB* v. *Lorben Corporation*, 345 F.2d 346 (1965); *Welch Scientific Company* v. *NLRB*, 340 F.2d 199 (1965); *Bourne* v. *NLRB*, 332 F.2d 47, 48 (1964); *Lincoln Bearing Company* v. *NLRB*, 311 F.2d 48 (1962); and *NLRB* v. *Tennessee Coach Co.*, 191 F.2d 546 (1951).

93. As found during the hearing, Robert Bishop, Chief Photographer, and George Blaha, Radio News Director, are "supervisors" as defined by Section 2(11) of the NLRA:

> . . . any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to ecommend such action, if in connection with the foregoing, the exercise of such is not of a merely routine or clerical nature, but requires the use of indepen-

of the enumerated powers is sufficient to
as a supervisor, even if the power is
v. *N.L.R.B.*, 176 F.2d 385;
ishop and Blaha are not
Section 9(b) of

the NLRA which defines "employees for collective bargaining purposes and excludes any individual employed as a supervisor" [29 USC 152(d)]. Accordingly, conversations between the Grosses and either Bishop or Blaha cannot constitute unlawful interrogations in violation of the NLRA.

94. Three of the interrogations involved meetings in other than a front office-type setting and this is a factor to be considered in the overall determination for an unlawful interrogation. See *Pioneer Drilling Co., Inc.* v. *NLRB*, 391 F.2d 961 (1961). Diane Smith met with Martha Dixon twice at her home and at a local restaurant and they had known each other before Smith's employment at GTI. Tom Jones met with Grossfield near the company swimming pool. While Tom Jones was part of GTI management, his reputation among the employees was that of someone who would listen to employee problems and suggestions and was not afraid to express his views to the Grosses. Grossfeld knew Jones in this capacity.

95. The findings of fact establish and it is concluded that the interrogation or conversations between management and employees were noncoercive in nature.[104] Several interrogations were between friends in a setting that was not the usual business setting. Others occurred in the context of business as usual where the union discussion was only part of the meeting. For example, Allen's conversation occurred during a regular scheduled meeting with Gross to discuss the news operation and Diane Smith's conversation with Harold Gross occurred at a meeting requested by her to review her salary and duties.

96. A series of events were shown in the record dealing with actions taken by GTI after the election. The complained of acts include the 15-minute deadline for submission of news materials, the discrepancy sheets, unauthorized personnel in the master control room, restricting use of the TV announce booth, changing the back door lock with restricted distribution of new keys, the posting of a no solicitation notice, daily reports of news assignments and information on photographer assignments to Grossfeld.

97. The employer has a right to operate the business pursuant to the managerial prerogative in the aftermath of a union election. See *Seattle First National Bank* v. *NLRB*, 444 F.2d 30 (1971). The ACLU alleges that the postelection operation decisions made by GTI constitute a violation of both 8(a)(1) and 8(a) (3) of the NLRA.

98. There is an interrelation between 8(a)(1) and 8(a)(3) and well defined elements must be found to constitute a violation. This is established by three cases of the United States Supreme Court: *Textile Workers Union of America* v. *Darlington Manufacturing Company*, 380 U.S. 263 (1965); *NLRB* v. *Brown*, 380 U.S. 278 (1965); and *American Ship Building*

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[104] This is based upon an objective test and allowing latitude to management for free speech.

Company v. *NLRB*, 380 U.S. 300 (1965). These cases establish that before a violation of Section 8(a)(1) of the NLRA can be found, it must be first found that the business justification for those acts is outweighed by inferences of violation of the employees' rights under the NLRA resulting from the act of management. This outweighing test is well recognized as set out in the *Darlington* case:

> Preliminarily it should be observed that both petitioners argue that the Darlington closing violated § 8(a)(1) as well as § 8(a)(3) of the Act. We think, however, that the Board was correct in treating the closing only under § 8(a)(3). Section 8(a)(1) provides that it is an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of" § 7 rights. Naturally, certain business decisions will, to some degree, interfere with concerted activities by employees. But it is only when the interference with § 7 rights outweighs the business justification for the employer's action that § 8(a)(1) is violated. (380 U.S. at 268–69.)

99. Some of the policies which form the factual basis upon which GTI seeks to justify its action as a valid part of its management function are better documented than others. The policy on daily discrepancy reports and the use of master control room had been policies, but not regularly enforced by GTI. There was substantial support for the decision to change the lock on the back door because of a theft of memos from Staudt's desk. Locks had been changed many times before and at one time a security guard was hired to improve the station's security. It cannot be found that the restricted distribution of keys constituted an unauthorized practice. The no solicitation policy had been established, except that GTI should have been more specific to the exceptions to this policy (United Fund, Christmas present for Harold Gross). The reporting of employees for a discrepancy was another established policy, although not routinely enforced.

100. While the Grossfeld dismissal will be considered, *infra*, several actions by GTI need to be considered here. For example, James Gross criticized Grossfeld on his news judgment in connection with the Helfer, Henson and West Side stories. GTI had received complaints about each of these stories. The investigation of the photographers assignment to Grossfeld was a matter brought up by Bishop and when the report was turned into Gross it demonstrated no basis for a complaint and the matter was dropped. The one policy that was never relaxed was the dress code. The direction to Grossfeld to trim his beard did not violate the NLRA. Grossfeld was an on-the-air personality and an employer has a right to enforce grooming standards, *Hotel & Restaurant Employees and Bartenders International Union AFL–CIO* v. *Playboy Clubs International, Inc.*, 324 F. Supp. 859 (1971), rev'd, 454 F.2d 703 (1972), and *Brown* v. *D.C. Transit System, Inc.*, 523 F.2d 725, *cert. denied*, 423 U.S. 862 (1975).

101. Taking all of these acts into consideration as a group, it cannot be found that the record supports a conclusion that GTI had a discriminatory

motive to discriminate against the news department employees for their unionization efforts. The acts taken by GTI are supported by a business justification [Section 8(a)(1)] and no coercion is found which would outweigh that business judgment. No discriminatory motive is found on the part of GTI which would violate Section 8 (a)(3) of NLRA. See *Robertshaw Controls Company, Acro Division* v. *NLRB*, 386 F.2d 377, 383 (1967).

102. A separate element of the alleged Sections 8(a)(1) and 8(a)(3) violation is the discharge of Grossfeld and Hart. If the employees were discharged because of actions on behalf of a labor organization it would violate Section 8(a)(3) of the NLRA. *NLRB* v. *South Rambler Company*, 324 F.2d 447 (1963). But it is not enough to show a coincidence between union activity and discharge. *General Mercantile & Hardware Company* v. *NLRB*, 461 F.2d 952 (1972). In cases before the NLRB the General Counsel must show beyond suspicion or surmise that the employee has been disciplined as a direct result of the employee's union activities. *Northern Petrochemical Company* v. *NLRB*, 469 F.2d 352 (1972), and *Dubin-Haskell Lining Corp.* v. *NLRB*, 375 F.2d 568 (1967). The question of a motive for the discharge was considered in *Lozano Enterprises* v. *NLRB*, 357 F.2d 500 (1966), where the court held:

> . . . With discharge of employees a normal, lawful legitimate exercise of the prerogative of free management in a free society, the fact of discharge creates no presumption, nor does it furnish the inference that an illegal—not a proper—motive was its cause. An unlawful purpose is not lightly to be inferred. In the choice between lawful and unlawful motives, the record taken as a whole must present a substantial basis of believable evidence pointing toward the unlawful one. (357 F.2d at 503.)

A number of events are pertinent to a consideration of whether Grossfeld and Hart were discharged in violation of Section 8(a)(3) of the NLRA including some events that have been previously considered which appeared to be based in support of substantial valid company policies. For example, the citation of Grossfeld for alleged late delivery of film, placing Grossfeld's name on a no solicitation memo which included a possible dismissal for violation concerning the Henson, Helfer and West Side stories and Grossfeld's personal appearance. Some of these events have been explained, others have not. The inclusion of Grossfeld's name on the no solicitation memo appears justified because management believed Grossfeld was a leader or officer in the union but the Henson, Helfer, West Side stories, while a legitimate area of concern to GTI appeared to be the reopening of a closed issue in consultation with the GTI labor counsel, Boonstra. Boonstra opened a file on Grossfeld labeled "Grossfeld investigation" and GTI and Boonstra exchanged thoughts on just how far they could treat this matter including discharge. The record shows that Grossfeld had done hundreds of stories for GTI and he was generally regarded as an exceptionally capable reporter and James Gross first appeared to have resolved the matter in favor of Grossfeld and his stated purpose in again dealing with these events was to get a good reporter back on the track. This objective did not appear to require that a labor attorney be consulted on discipline including discharge.

103. The Grosses knew that Grossfeld and Hart were the primary organizers of the union and Harold Gross expressed shock at the outcome of the union vote. Thus, while there was a basis for the action taken by GTI after the election such as placing the master control room off limits, a question is raised whether GTI has singled out Grossfeld for his part in the union. Evidence of this can be found in the discrepancy report incident. When James Gross was advised that Grossfeld was a bystander and had no part in the late delivery, it appears that the report should have been corrected to delete Grossfeld's name, but the discrepancy report was not revised. If you apply a reasonable man test, James Gross should have conducted an investigation, satisfactory to him, and if Grossfeld's version was correct, then Grossfeld's name should have been deleted from the discrepancy report.

104. On November 23rd, about seven weeks after the union elections, Grossfeld was fired as was Hart for submitting false timecards. Both Hart and Grossfeld had taken off on November 12th and claimed the day as worked on their timecards. Grossfeld had initially asked his supervisor, Mr. Long, for the day off and stated he wanted to see a doctor in Detroit. Long assumed Grossfeld was asking for sick leave because a doctor's visit was mentioned. Actually, both Hart and Grossfeld went to Chicago on November 12th to look for a job. It is the GTI position that Hart and Grossfeld had "cheated" the Grosses out of a day's pay and that this justified the termination.

105. The procedure for filling out a timecard or cards at GTI was a matter of total confusion to the employees, including Hart and Grossfeld.[105] There were instructions issued by Tremper which were not clear and this was further confused by a GTI long-standing policy of avoiding the necessity to pay overtime. Only the Grosses could approve overtime. Employees knew of this policy so the employees and their supervisors worked out a system for compensatory time (comp. time). It was very informal with no real bookkeeping. The employee would keep a record of his comp. time and the supervisor would have general knowledge of who was entitled to comp. time and about how much time. Also, while the law may be otherwise, it was not unusual for comp. time to be used in a week other than the week in which it was earned. This accommodated the GTI objections to overtime and provided a form of compensation to the employee. The Grosses knew about comp. time, even though it

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[105] Attempts to explain the procedure in this record did not add to an understanding of timecards.

was not a formal company policy. Again, without a formal policy, the method of claiming comp. time was to show one of the regular work days as being on duty—even though the employee was not present. The record shows and it is not disputed, that both Hart and Grossfeld had adequate comp. time accumulated to cover the day off on November 12th. So in accordance with their understanding of an informal procedure, they took comp. time leave on November 12th and entered this on the timecard as a day worked. Thus, despite the inference that can be drawn that Hart and Grossfeld claimed a day's pay for a day not worked, the actual fact is that they had correctly completed their timecards based on a well established but informal, unwritten policy. Grossfeld told James Gross this was standard procedure. This was not the first time comp. time was accounted for in this fashion. On occasion employees had been directed to take comp. time to avoid overtime pay and Gross knew about this practice. With all the confusion about the correct way to complete a timecard, the Grosses policy against overtime, the informal method of computing and taking comp. time, mistakes were made. In the past when this happened, it was not a front office showdown. Rather, Tremper would simply call the mistake to the attention of the proper person and the correct entry would be made. Further, there had never been an employee fired for this offense before.

106. Given the entire context of this episode and the conclusion that Hart and Grossfeld had done nothing wrong in the way they accounted for their time on November 12th, it must be concluded that the discharge of Grossfeld was based on an improper anti-union motive that was primarily directed at Grossfeld. It appears that James Gross was not disposed to listen to explanations from anybody on November 23rd and the primary business of the day was to confer with Boonstra on the text of the dismissal notices to Hart and Grossfeld and the probation notices to their supervisors Bishop and Long. None of this can be related, in any way, to James Gross' professed intent with respect to Grossfeld, i.e., to get him back on the track with respect to his otherwise excellent news coverage, except in three instances which resulted in complaints. Given the total picture of haste and the failure to check into the matter, to at least determine if GTI had been "cheated," leaves the conclusion that GTI did violate Section 8(a)(3) of the NLRA with respect to the discharge of Grossfeld. Grossfeld was the chief target and the discharge of Hart and the probation notices to Bishop and Long followed almost automatically since it would have been impossible for appearance sake alone to have taken action against Grossfeld without the other three participants. However, in this respect all four were the victims of disciplinary action which was a runoff from the action against Grossfeld. It is recognized that if Hart and Grossfeld had submitted false timecards, there is ample legal authority to support a dismissal—but such is not the case here.

107. GTI argues that the violation of Section 8(a)(3) as found above cannot be based upon "pyramiding inferences" unless such inferences can be based upon substantial evidence or facts reasonably established. Inferences were drawn in dealing with the violation of Section 8(a)(3) of the NLRA, but, such inferences can be tested against the actions of a reasonable man. For example, would management leave a name in a discrepancy report after it has reason to believe the person was not involved? Would a reasonable man rush to fire an employee who is the subject of a stated desire to rehabilitate, on the basis of an alleged false timecard when an investigation or simply listening to the explanation, would show the timecards were correct? It is primarily the inferences which were drawn from the testing of the management behavior under a reasonable man test that are the basis for this conclusion.

Section 8(a)(5)

108. Section 8(a)(5) of the NLRA deals with the parameters of a party's obligation to bargain under Section 8(a)(5) of the Act as set by numerous variables operating during the bargaining process. In reaching a conclusion in this area, the entire bargaining process between GTI and NABET must be viewed as a whole. The underpinnings for the duty to bargain is found in Section 8(d) of the NLRA:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . . [29 USC § 158(d).]

The question of bargaining in "good faith" must be judged by the circumstances surrounding the bargaining for the contract and the behavior of the parties is crucial in drawing a distinction between "surface" and "hard" bargaining. The length or duration of bargaining sessions is not conclusive as to a party's duty to bargain and neither party is required to concede to the demands of the other party.

109. Good faith bargaining may be further defined as a duty of both parties to be represented at negotiations by individuals with authority to engage in meaningful and thorough bargaining with the other side. It does not require that the negotiator be given authority to make the final decision. *Capital Transit Co.*, 106 NLRB No. 29 (1953). The negotiator must be given authority to discuss freely contract proposals and counterproposals, enter into tentative compromises or agreements and provide clarification and limitation of disputed issues. *Gulf States Canners*, 224 NLRB No. 215 (1976), and *Great Western Broadcasting Corp.*, 139 NLRB

No. 11 (1962), and the negotiator must be more than a mere carrier of the party's position. *Great Western Broadcasting Corp., supra.*

110. The record shows that the GTI negotiator (Boonstra) discussed, clarified, compromised, limited and agreed, both tentatively and formally, to the proposals of NABET. Bargaining did occur even though the pace may have been slow at times. The negotiations were long and hard particularly since this was an entirely new contract with employees never before covered by a union contract. The bargaining did however continue and the parties did conclude a contract and no violation of Section 8(a)(5) can be found on the basis of this record.

111. Since GTI has been found to have violated Section 8(a)(3) of the NLRA the question then becomes should GTI be disqualified on the basis of such violation. In 1959, the Commission adopted the Report *Violations by Applicants of Laws of United States*, 42 FCC 2d 399.

112. The Commission declined to adopt a blanket policy disqualifying any applicant found to have violated federal law. It did specify certain criteria that should be applied such as was the violation wilful or inadvertent, whether the violation was isolated or part of a pattern and the age of the violation. The GTI conduct under this test, and standing on its own, does not warrant a denial. The conduct was found to be wilful insofar as Section 8(a)(3) of the NLRA is concerned. GTI did however conclude a contract with NABET, Grossfeld and Hart have been reimbursed for lost wages (under the settlement agreement) and the single violation cannot be found of a nature to be weighed in the decisional process of justifying a conclusion that GTI cannot be relied upon as a responsible licensee. The question of GTI ability to continue as a licensee must be determined within the confines of the other issues which deal with this question.[106] Since no violations were found under Sections 8(a)(1) and (5) of the NLRA, the facts relative to these events will not be further considered.

Contour Map Issue

113. This issue was added by the Presiding Judge to determine if GTI has misrepresented the 0.5 mV/m contour of Station WJIM-AM. Commission policy relative to the accuracy of information on station coverage provided to station advertisers, prospective advertisers and the public was enunciated in the late 1960's and early 1970's. *FM Broadcast Stations—Announcements of ERP*, 13 RR 2d 1638 (1968), *Universal Communication of Pittsburgh*, 21 FCC 2d 542 (1970). The Commission has attached decisional significance to whether the licensee's conduct has involved wilful acts of misrepresentation. *Key Broadcasting Corp.*, 34 RR 2d 741 (1975), *Miracle Valley Broadcasting Co.*, 46 FCC 2d 989 (1974).

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[106] GTI has objected to this entire procedure and urges that the NLRB has exclusive jurisdiction over alleged violations of the NLRA. Similar objections were presented at the time this issue was added and such arguments are not considered herein.

114. The findings show and it is concluded that GTI prepared and distributed to advertisers, potential advertisers and advertising agencies five different promotional pieces which contained as part of the presentation contour maps which significantly exaggerated WJIM's coverage of its AM station. On four of these five contour maps the 500 uV/m contour was labeled and all five maps contained AM contours which were similar in the coverage shown. As a result, the actual coverage, when compared to the map on file with the FCC, was exaggerated by 174,408 persons or 32% and the interference-free contour exceeded the WJIM-TV interference-free contour by 1,588 squaure miles or 46%. The number of persons with the primary service was exaggerated by 189,239 or 36% and the number of persons actually receiving primary service by 236,596 or 49%. While GTI attacked the Bureau's exhibit which demonstrated that the extent of the exaggeration, it is found that the Bureau's study does present the more conservative view and resolves all doubts in favor of GTI. (For example, the Bureau's interference studies.)

115. From the summer of 1972 until December, 1973, WJIM used a map which showed two unlabeled contours that the sales staff believed to represent the day and night coverage of WJIM. As indicated, those contours were not labeled, but there was a close correlation shown to exist between previous versions of the contour map which did label the contour. When this is added to the salesmen's belief that these were day-night contours and the salesmen permitted clients to engage in such belief, Gross must be charged with permitting the representation that it was the 500 uV/m contour shown for day and night coverage for WJIM-AM. The outer contour contains an area that is 45% of that defined in the official 0.5 mV/m contour map. And if you ignore cities of less than 35,000 population, the population is overstated by 1,246,471 persons. There is no longer any question that the Commission expects a licensee to deal candidly with the public and the use of inaccurate or exaggerated maps cannot be condoned. *In Re: Motion for Declaratory Ruling in a Broadcast Station's Promotional Practices*, 34 RR 2d 741 (1975). It is clear that the entire concept of a broadcaster dealing candidly with the public includes the broadcaster's obligation to advertisers to accurately show in its promotional coverage maps the true contours. See *Town and Country Radio, Inc.*, 65 FCC 2d 694 (Rev. Bd. 1977); *Athens Broadcasting Company, Inc.*, 27 FCC 2d 7 (Rev. Bd. 1971); *Universal Communication of Pittsburgh*, 17 RR 2d 1262.

116. Harold Gross testified that he believed advertisers buy time on the basis of population and do not pay attention to the area shown on a contour map. Thus GTI urges that all the language on the sales brochures, other than the actual maps, contains statistical claims based on population data or retail sales data addressed to Lansing only or a three-county area referred to as the Lansing metropolitan areas, both of which are signifi-

cantly smaller than the areas shown on the official coverage map as filed with the FCC. However, the map in use from 1961 to 1973 did not include population figures and the map versions of December, 1973 and 1975 all contain identical population and sales figures, although Harold Gross knew that the Lansing community was growing and 1973 population and sales figures would be an understatement. Further, an inspection of the total sales brochures, i.e., the text plus the map, demonstrates that the map was a key element in the entire presentation.

117. GTI did present one witness (Mr. Bernard Pearse) who states that in his position as WJIM national sales representative, he did not use contour maps. Pears did not work for WJIM between 1961 and 1975 and gave no evidence of knowledge of practices actually used for WJIM during this period. Pearse also admitted that he had nothing to do with local sales at WJIM which is the dominate part of WJIM's business.

118. Added evidence of the extent of the sales brochure exaggeration was the notation contained on the WJIM-TV contour maps from 1961 to December, 1973 that the station's power was "1000 watts". This was not true as the station was required to reduce power at night to 250 watts. The true contour for the 250 watt nighttime operation would have been substantially smaller and a failure to represent the nighttime coverage and power correctly is a practice which is clearly misleading. It is also concluded that the contour maps as contained in the sales brochures are clearly misleading and such inaccurate information was further complicated by false assumptions on the part of WJIM salesmen so that the total affect on an advertiser or prospective advertiser was doubly misleading. See *Town and Country Radio, Inc., supra*, at 705.

119. Given that the maps were in and of themselves misleading and were made more so by the representations of salesmen, the second question must be answered, i.e., did principals of GTI intend to mislead. Neither Harold nor James Gross took part in the preparation of the maps, and, they took no action to determine if maps prepared by others were accurate, other than the last map when the chief engineer was asked to give his opinion as to accuracy. The maps were actually prepared by Elmer Davis, the art director of the station, who had no engineering background. What instructions Mr. Davis may have received are not known since he was deceased before this issue was added.

120. GTI continues to urge that one has to judge the intent based on the entire sales brochure and when you take the text material into account, which was under the direct supervision of Harold Gross (he was the author of some of the text), it shows an intent to restrict coverage claims for the station to Lansing or the three-county metro area. Further, Harold Gross attempts to justify some of the map claims as to coverage by stating that the station can be heard on his car radio in several locations in the so-called exaggerated area. Even Harold Gross could not claim an

ability to hear the station in any area that approached the outer limits of coverage as claimed on his sales brochures, which in and of itself should have put him on notice that the coverage claim may be overstated.

121. Related to this testimony on intent is the testimony given by Alden Shipley who claims that the chief engineer, Mr. Onken, told him the map was inaccurate and that Onken had advised James Gross of his feelings on this regard. Onken and James Gross denied Shipley's version. While it can be said that Shipley is a disinterested witness with no reason to give false testimony, Mr. Onken the chief engineer is also found to be candid and forthright in his testimony. The statement attributed to Onken by Shipley was made some time before this testimony and the details of the alleged statement were less than clear. Accordingly, neither Shipley nor Onken's testimony will be afforded any decisional weight on this issue.

122. However, all of the evidence on intent still leaves a major question of whether James and Harold Gross were involved in an active indifference to the whole matter of contour maps and thus permitted a misrepresentation to be made which should imply an intention to make the false representation. It is concluded that taking into accord the developing nature of the Commission's policy against sales brochures, the total content of the brochures, i.e., the text plus the maps, that the record fails to demonstrate an intent to mislead sufficiently to result in a denial of the AM-FM and TV licenses on this basis alone. See *Key Broadcasting Corporation*, 60 FCC 2d 575 (1976); *Town and Country Radio, Inc., supra*. Accordingly, it is concluded that the GTI portrayal of its 0.5 mV/m coverage is deceptive which will be considered with other evidence in assessing GTI's qualifications to remain a licensee.

Summary of Ultimate Conclusions of Issues

Issues (a)—(c)—The News Practices Issues

123. Issues (a) through (c) are resolved favorably to GTI.

Issue (d)—The Private Interest Issue

124. It is concluded that GTI did direct that the Lansing Tennis Club not be covered between December 27, 1972–July, 1973 in order to serve the licensee's private rather than the public interest, namely to aid in the collection of an overdue advertising bill owed to GTI. While it is concluded that this action by GTI is not in and of itself disqualifying, it will be considered in the overall evaluation of GTI's qualifications for a renewal of its licenses.

Issues (e) and (f)—The Ferman Letter Issues

125. Issues (e) and (f) are resolved favorably to GTI. While misrepresentation was found in the method of obtaining the Ferman letter from

the Lansing Tennis Club, the record is not clear that the management level of GTI can be charged with such knowlege. It is also concluded that GTI withdrew all reliance on the Ferman letter within a reasonable period of time after it was determined that the facts stated in the Ferman letter were inaccurate. Such withdrawal was before the Commission took any action in reliance on the Ferman letter.

Issue (g)—Misrepresentation of the Number of Public Service Announcements

126. This issue deals with the question of whether or not GTI misrepresented the extent of the public service announcements broadcast during the 1973 composite week. No evidence was introduced under this issue. Accordingly, the issue is resolved favorably to GTI.

Issue (h)

127. This issue calls for an ultimate conclusion based upon the facts and conclusions as found under Issues (a) through (g), inlcusive. It is concluded GTI did direct non-coverage of the Lansing Tennis Club to promote GTI's private interests. It is further concluded that this conclusion, standing alone, would not be a basis to deny renewal of the GTI licenses. However, this conclusion will be considered with other issues considered *infra*.

The Section 73.1208 Issue—The Taped Weather Broadcasts

128. It is concluded that GTI did violate Section 73.1208 of the Commission's Rules and such conclusion is a basis to reject the GTI applications to renew its licenses. However, as with the Ferman letter issue, the facts and conclusions on this issue standing alone would not be sufficient to warrant the sanction of the denial of the renewal of license applications. However, this conclusion will again be considered with other basic qualification issues in this proceeding.

The Labor Issue

129. It is concluded that GTI did engage in anti-labor activities in violation of Section 8(a)(3) of the National Labor Relations Act with respect to the dismissal of Mr. Grossfeld.

130. It was further concluded that this incident is not a basis for further action against the GTI renewal of licenses based on the Commission's *Report on Violations by Applicants of Laws of U. S.*, 42 FCC 2d 399.

The Clipping Issue

131. GTI is found to have engaged in the practice of network clipping in violation of Section 73.1205 of the Rules over an extended period of time. Further, its intent to engage in such practice is clear. The facts and

conclusions on this issue require the ultimate conclusion that such conclusion, in and of itself, is a basis to deny the renewal of the GTI licenses.

The Clipping Misrepresentation Issue

132. As with the conclusion on the clipping issue, the GTI lack of candor in advising the Commission as to the true nature of issue, the GTI lack of candor in advising the Commission as to the true nature of its clipping practices in response to the Commission's specific request for such information is a basis, in and of itself, to deny the GTI renewal of license applications.

The Contour Map Issue

133. GTI is found to have used deceptive maps in support of its efforts to obtain advertising clients for the GTI stations. This conclusion in and of itself would not be a basis to deny the GTI renewal of license applications, but it will be considered with the other issues in this proceeding.

The Public File Issue

134. The Public File Issue is resolved favorably to GTI insofar as it is a possible basis for disqualification.

Discussion of the Ultimate Conclusion

135. The findings and conclusions in connection with the clipping and clipping misrepresentation issues each constitute a basis, standing alone or together, to deny the renewal of the GTI licenses. When this conclusion is also considered with other adverse conclusions such as the Private Interest Issue (Lansing Tennis Club), Taped Weather Broadcasts Issue and the Contour Map Issue, it becomes apparent that in each of these issues, some form of misrepresentation is involved either to this Commission or network providing programming to GTI,[107] or the public in the GTI listening and viewing area, or the advertising clients of GTI. The clear intent of GTI to engage in misrepresentation and outright fraud with representatives of the government, industry and the public further demonstrate that not only are the violations found to be of an absolutely disqualifying nature but, the relationship of all these various forms of misrepresentation leads to the further conclusion that GTI is beyond rehabilitation.

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[107] Indirectly this results in a misrepresentation to an unknown number of national advertisers since the network bases its billing for advertising services in part on GTI certificates that certain programs have been carried, when such is not the fact.

136. Accordingly, IT IS ORDERED, that the GTI applications for renewal of the licenses for Stations WJIM, WJIM-FM and WJIM-TV ARE DENIED:[108]

137. IT IS FURTHER ORDERED, that GTI WILL TERMINATE all operations of Stations WJIM, WJIM-FM and WJIM-TV as of 12:00 P.M. on the 30th day after this Initial Decision becomes final or as otherwise ordered by the Commission;

138. IT IS FURTHER ORDERED, that in accordance with the Commission's Designation Order (paragraph 30) released April 22, 1974 (FCC 74–374, Mimeo 11059) the resolution of the issues in this docketed proceeding SHALL BE BINDING on any other license commonly-owned or controlled with the captioned licensee and will be *res judicata* as to any other such licenses.

FEDERAL COMMUNICATIONS COMMISSION

Byron E. Harrison
Administrative Law Judge

*Appendices A&B—not included—may be seen in Dockets Branch.

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[108] Under Rule 1.276, appeals (in the form of exceptions to the Initial Decision) must be filed within thirty (30) days of the public release of the full text hereof, unless an extension of time is granted. In the event no exceptions are filed and the Commission has not undertaken to review the Initial Decision during the prescribed 50-day period or taken any of the actions specified in paragraph (c) of Rule 1.276, the Initial Decision becomes effective pursuant to paragraph (c) of Rule 1.276.

Amendment
Application, Amendment of
Procedures
Summary Decision

Review Board affirmed summary decision in single application proceeding. ALJ's acceptance of applicant's post-designation engineering amendment needed to resolve qualifying engineering type issues, despite claims that good cause for acceptance of the amendment was not shown.

—*Son Broadcasting, Inc.*
BC Docket No. 80–436

FCC 82R–69

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Application of SON BROADCASTING, INC. Santa Fe, New Mexico For Construction Permit for New Television Broadcast Station	BC DOCKET NO. 80–436 File No. BPCT–5053

Appearances

Stuart B. Mitchell and *James L. Ovster*, on behalf of Son Broadcasting, Inc.; and *Charles W. Kelley* and *Joseph A. Belisle*, on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

DECISION

Adopted: November 23, 1982; Released: November 29, 1982.

BOARD MEMBER JACOBS FOR THE REVIEW BOARD:

1. In this single application proceeding, Son Broadcasting, Inc. (Son) seeks authorization to construct a new television broadcast station (Channel 11) at Santa Fe, New Mexico.[1] By Summary Decision (S.D.), FCC 82D–44, 92 FCC 2d ____, the ALJ granted Son's application, determining that his previous approval of Son's February 5, 1982 petition for leave to amend (Memorandum Opinon and Order, FCC 82M–1840, released June 10, 1982) left no genuine issue of material fact concerning either of the designated qualifying issues (see note 1, *supra*) and permitted a conclusion that grant of the application would serve the public interest, convenience and necessity. S.D., para. 7. The Broadcast Bureau has filed exceptions to the Summary Decision, asserting that the ALJ erred in permitting Son to amend the engineering portions of its application without meeting the "good cause" and "unforeseeability" post-designation amendment requirements of Section 73.3522(b), 47 CFR 73.3522(b), of the Commission's Rules. The Bureau urges that the proceeding should be remanded for the preparation of an Initial Decision by the ALJ *sans* the engineering amendment.[2] Son has replied.[3] The Bureau's exceptions will be denied and the Summary Decision affirmed. For the Board to adhere to the Bureau's position *under the facts of this case* would be incorrect as a matter of law and an outrage as a matter of equity and pursuit of the public interest.

2. It is clear from the Bureau's exceptions that its primary concern in this case is the vindication of proper administrative procedure, which it believes has been abused by Son. See Bureau Br., p. 7. The Bureau would not even have opposed acceptance of Son's engineering amendment if Son had only agreed to have its application removed from hearing status and returned to the processing line where it would be again subject to the filing of competing applications. *Id.* While the Commission's adjudicatory processes are intended to promote the public interest goal of a choice among applicants, that goal has already been served here through the original "cut-off list" procedures of Section 73.3572(c) of the Rules, 47 CFR 73.3572(c). To subject Son's application to a second round of competition would needlessly delay the institution of a first or second local

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[1] By Memorandum Opinion and Order, 79 FCC 2d 598 (1980), the Commission designated this application for consolidated hearing with a Santa Fe channel 6 application filed by New Mexico Media Co., despite the lack of mutual exclusivity, because of common city grade coverage and *de facto* reallocation engineering-type qualifying issues. In Order, FCC 82M–0039, released January 11, 1982, presiding Administrative Law Judge (ALJ) Frederick J. Coufal severed the two applications, and in a Summary Decision, FCC 82D–1, released January 15, 1982, he granted the New Mexico Media application.

[2] The almost inevitable result of such a remand would be the denial of Son's pending application without prejudice to its refiling a new application with the very revised engineering that is currently proferred—a mummery.

[3] Son has also filed a motion for expedited consideration, which we will dismiss as moot in light of our action herein. Both parties have requested oral argument, which will be denied as unnecessary to further illuminate the issues before the Board.

television service to Santa Fe (depending on when New Mexico Media's station becomes operational), is not required by the pro-competition concerns of *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945), and would smack of an unwarranted sanction against Son.

3. The courts have acknowledged the need for demanding compliance with the Commission's procedural rules to protect the interests of orderly administration and finality. *E.g., Civic Telecasting Corp.* v. *FCC*, 523 F.2d 1185 (D.C. Cir. 1975) (per curiam). However, when the Commission applies its procedural rules strictly it must remain mindful of the underlying purposes of those rules to ensure that rigidity does not override those purposes, justice, or equity. *See Crosthwait* v. *FCC*, 584 F.2d 550 (D.C. Cir. 1978); *WAIT Radio* v. *FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). It is evident from an examination of Commission case law that the primary purposes of Section 73.3522(b) would not be facilitated by denying Son's engineering amendment. Those purposes emphasize preventing undue prejudice to other parties and undue delay in administrative proceedings. *See Erwin O'Conner Broadcasting Co.*, 22 FCC 2d 140, 18 RR 2d 820 (Rev. Bd. 1970). Since this is no longer a comparative proceeding, there are no parties which can be prejudiced by the amendment. Furthermore, granting the amendment will not result in delay of the administrative process; it will actually expedite it by permitting the subject application to be granted without further ado. Although the Bureau's dudgeon is somewhat understandable—since a more timely filed amendment could have obviated the five days of hearing that occurred in September and October 1981 and could thereby have conserved the participants' time and resources—we must also weigh the Commission's more magnanimous attitude toward the *Erwin O'Conner* amendment acceptance criteria where, as here, the curing of disqualifying application defects is involved. *Anax Broadcasting, Inc.*, 87 FCC 2d 483, 49 RR 2d 1589 (1981). While *Anax* does not entirely relieve an applicant in Son's vulnerable situation from the good cause requirements of Section 73.3522, *see California Broadcasting Corp.*, 90 FCC 2d 800, 808, 51 RR 2d 1539, 1545 (1982), those requirements must be applied in light of the above-referenced rule purposes and the facts of each case. *See Circle L, Inc.*, 7 FCC 2d 494, 497, 9 RR 2d 854, 858 (Rev. Bd. 1967) (belated engineering amendment accepted). Applying these standards to this case, we conclude that the ALJ properly accepted Son's amendment. However, in so concluding neither the ALJ nor the Board condones Son's failure to follow New Mexico Media's more timely lead in curing its engineering defects. We hold only that the public interest would not be served by rejecting Son's amendment in this single application proceeding. In this way justice is done and the integrity of the Commission's amendment procedures for multi-party proceedings is preserved.

4. ACCORDINGLY, IT IS ORDERERD, That the application of Son Broadcasting, Inc. (File No. BPCT–5053) to establish a new television broadcast station at Santa Fe, New Mexico, IS GRANTED; that the motion for expedited consideration filed by Son Broadcasting, inc. on September 23, 1982 IS DISMISSED as moot; and that the requests for oral argument filed by the Broadcast Bureau on July 22, 1982 and by Son Broadcasting, Inc. on October 4, 1982 ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Jerold L. Jacobs
Member, Review Board

FCC 82D-44

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Applications of	
Son Broadcasting, Inc. Santa Fe, New Mexico	BC DOCKET NO. 80-436 File No. BPCT-5053
For Construction Permit for New Television Broadcast Station	

Appearances

James L. Oyster, Stuart B. Mitchell, James A. Gammon, George R. Grange II, Carl J. Fielstra, and *A. Wray Fitch III* on behalf of Son Broadcasting, Inc.; *Eugene F. Mullin, S. White Rhyne Jr.*, and *Brian M. Madden* on behalf of New Mexico Media Co.; *Marvin Rosenberg* and *Patricia A. Mahoney* on behalf of Hubbard Broadcasting, Inc.,; *Robert B. McKenna* on behalf of New Mexico Broadcasting Company, Inc.; *William H. Crispin* and Deborah Agus on behalf of Galaxy-Southwest Television, Ltd.; and *Joseph A. Belisle* on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

Summary Decision of Administrative Law Judge Frederic J. Coufal

Issued June 9, 1982; Released: June 11, 1982

1. This will consider the contingent motion for summary decision filed February 5, 1982 by Son Broadcasting, Inc. (Son) and the comments filed by the Broadcast Bureau on February 19, 1982.

2. The contingent motion for summary decision alleges that upon the allowance of a petition for leave to amend filed February 5, 1982, the issues designated against it will be resolved in its favor and its application should then be granted. The Broadcast Bureau opposes the motion because it believes the petition for leave to amend should not be granted and that

even if it were to be granted, Son's failure to amend its financial showing as a result of the amendment precludes a summary decision.

3. Since the filing of the Bureau's opposition, the application for leave to amend referred to in the motion has been granted as supplemented by amendments concerning Son's finances.

4. Under section 1.251 of the rules, a motion for summary decision may be granted if there is no geninue issue of material fact for determination at the hearing and the applicant is otherwise entitled to summary decision. In this case, two substantive issues have been designated against Son as well as the ultimate issue of public interest, convenience and necessity based upon evidence adduced as to the first two issues. Except as indicated by the issues specified, Son was found in the designation order to be qualified to construct and operate the station as proposed.

5. The first issue against Son was whether Son would encompass Santa Fe with a city grade contour predicted in accordance with the rules. Engineering material submitted with the amendment (which includes a new transmitter site) indicates that the predicted city grade contour will extend a distance of more than a mile beyond the fartheast city limit of Santa Fe and that all of the city will be encompassed by a greater than city grade signal. No party has challenged those engineering conclusions.

6. The second issue is whether a grant of Son's application will constitute a *de facto* reallocation of channel 11 from Santa Fe to the larger city of Albuquerque. Engineering material submitted with the amendment indicates that the new transmitter site is closer to Santa Fe than to Albuquerque and that Santa Fe will receive the stronger signal from Son's transmitter. Son will provide less than a city grade signal to Albuquerque. No party has challenged those engineering conclusions.

7. There is no genuine issue of material fact for determination at a hearing regarding either the city grade coverage issue or the *de facto* reallocation issue. Since both those issues will be resolved in favor of Son, there is no genuine issue of material fact regarding the ultimate issue, whether a grant of Son's application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that the contingent motion for summary decision filed February 5, 1982 by Son Broadcasting, Inc. IS GRANTED.

IT IS FURTHER ORDERED that unless an appeal from this Summary Decision is taken by a party or it is reviewed by the Commission on its own motion in accordance with Section 1.276 of the rules, the application of Son Broadcasting, Inc. for a construction permit IS GRANTED.[1]

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[1] In the event exceptions are not filed within 30 days after the release of this Summary Decision and the Commission does not review the case on its own motion, this Summary Decision shall become effective 50 days after its public release pursuant to Section 1.276(d).

FEDERAL COMMUNICATIONS COMMISSION

Frederic J. Coufal
Administrative Law Judge

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